

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN, et al. *
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DAIRY FARMERS OF AMERICA, *
INC., et al. * CIVIL FILE NO. 09-230

FAIRNESS HEARING
Thursday, January 29, 2015
Burlington, Vermont

BEFORE:

THE HONORABLE CHRISTINA R. REISS
Chief District Judge

APPEARANCES:

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1 THURSDAY, JANUARY 29, 2015

2 (The following was held in open court at 9:37 a.m.)

3 THE CLERK: Your Honor, the matter before the
4 Court is civil case number 9-230, Alice Allen, et al.,
5 versus the Dairy Farmers of America, et al.

6 Representing the plaintiffs are attorneys Kit Pierson,
7 Emmy Levens, and Robert Abrams. Representing the
8 defendants are attorneys Steven Kuney, Carl Metz, and
9 Ian Carleton. And we are here for a fairness hearing.

10 THE COURT: Good morning.

11 MR. PIERSON: Morning, your Honor.

12 MR. KUNEY: Morning, your Honor.

13 THE COURT: As a housekeeping matter, I am
14 going to deny as moot without prejudice to renew all
15 pending motions *in limine* if we -- for both sides. If
16 we have a trial, you can refile them, and I may decide
17 to winnow down the number of them, but they have been on
18 our docket forever, and if we have a trial, it's not
19 going to be this month or next month, in any event.

20 I am planning on hearing from class members first.
21 I have already read everything that class members have
22 submitted. I have read the attorneys' papers. I do
23 have questions for the attorneys, but this is really a
24 hearing in which we hear from the class and the class
25 representatives, if they want to, about whether they

1 agree with the settlement, oppose the settlement, have
2 some thoughts that they want to convey to the Court
3 about whether the settlement is fair, reasonable, and
4 adequate. And in granting preliminary approval, that
5 does not mean the settlement is approved. That's how we
6 get to a fairness hearing, and hear from the class.

7 So what I am going to ask is that you come forward
8 if you want to speak, you identify yourself for the
9 court reporter and spell your name. She's going to be
10 taking down everything that you say, both with her
11 machine but also with an audio recording. And keep in
12 mind that she -- it's hard to keep up with people
13 speaking. I speak notoriously fast, and she is probably
14 one of our best court reporters in the state of Vermont.
15 So slow down when you speak, and we will try to get
16 everything that you want to say.

17 If we have time left over, we will talk to the
18 attorneys about their thoughts about settlement, but I
19 have read their submissions.

20 So let me ask if there are any class members or
21 class representatives who want to speak. I have a list
22 of people who have notified us, but if you are not on
23 the list, I plan on being flexible about that. And
24 right now the list consists of Bill Rowell, Paul
25 Burbeau, Reg Chaput, Larry Bailey, Richard Swantak,

1 Garret Sitts, Ralph Sitts, Jonathan and Claudia Haar,
2 and Ken Dibbell.

3 So why don't we start with -- I will get you
4 started. How about Jonathan and Claudia Haar, because
5 they are class representatives as well as class members?

6 JONATHAN HAAR: Excuse me.

7 THE COURT: So come on up, and you are going
8 to come to the podium if you are ready.

9 JONATHAN HAAR: Thank you, your Honor.

10 I was going to ask if -- thank you, your Honor.

11 I was going to ask if we could have Joshua Haar
12 speak first, if that would be possible.

13 THE COURT: Sure. Absolutely. I had to pick
14 somebody out of the class, and your name came up, so
15 that's fine.

16 JONATHAN HAAR: Well, thank you.

17 JOSHUA HAAR: All right. Thank you very
18 much for the opportunity to address the Court. Joshua
19 Haar. Last name -- well, you folks have that last name
20 down very well, I'm sure.

21 THE COURT: It's H-a-a-r, so we have to do it
22 for the court reporter.

23 JOSHUA HAAR: That's correct. Yes. Yes.

24 I'd like to address the Court today regarding the
25 injunctive relief. I believe for the farmers, both in

1 support of the settlement and against the settlement,
2 that injunctive relief has been at the center of the
3 issues that they have sought. I wanted to take a look
4 at the specific provisions laid out in the settlement
5 here. So I guess I will just start right into it.

6 The settling defendants, during the term of this
7 agreement, aren't going to enter into any full-supply
8 agreements, but the existing full-supply agreements are
9 untouched. This lawsuit was not brought on the basis of
10 full-supply agreements which defendants might bring into
11 existence at some future date, but rather for the ones
12 which are currently strangling the market. The fact
13 that this term here does nothing to touch those means
14 that it is not going to result in any market change.

15 The next one, that any agreements for the supply or
16 sale of raw Grade A milk to customers will be brought
17 before the DFA board of directors, or the DMS board of
18 directors, depending on which entity is creating
19 those -- oh, incidentally, they have the same address
20 and the same bank account number. There's -- there's a
21 great consolidation of power there.

22 But I actually went to look at the DFA board of
23 directors on their website, because I noticed further on
24 in the injunctive relief there's a requirement that DFA
25 will disclose the identity of their board of directors.

1 They already do so. A quick look at the website would
2 have resolved that.

3 What is not on their website, and which actually --
4 I've taken a look at the Dean Foods website, just as an
5 example of a similar -- similar corporate body. Things
6 like principles, director responsibilities, board
7 leadership structure, director qualifications, voting
8 for directors, committees and compensation, these things
9 are not addressed in the injunctive relief.

10 And additionally, and perhaps the main point on
11 bringing these agreements before the board of directors,
12 because our counsel negotiated away third-party vote
13 counting from us, we have little or no means of
14 influencing the board of directors, as members. So
15 these two provisions are not going to result in any
16 market change.

17 Moving to the next -- the next page of the
18 settlement: The settling defendants agree that they
19 will, upon written request by any of their respective
20 members located in Order 1, disclose to that member
21 summary of the terms of any of their agreements for the
22 supply or sale of raw milk. This disclosure needs only
23 to state whether it's a full-supply agreement, the
24 duration, and any other material provision, provided
25 this disclosure is permitted by the terms of the said

1 agreement.

2 Currently, if DFA, DMS wants to hide something,
3 they put in a clause and hide it. After this agreement,
4 if they want to hide something, they hide it. This does
5 not result in any change whatsoever.

6 We'll try (d). Settling defendants agree that any
7 cooperative member, affiliate, or associate of DFA, DMS
8 in Order 1 may, during the term of this agreement,
9 terminate its relationship with DFA or DMS upon no more
10 than 90 days without -- written notice without penalty.

11 This -- this is impossible for a cooperative member
12 to do. If they leave DFA, DMS, they know very well that
13 upon completion of the settlement term, they're out of
14 business. The only way to get the processors is by
15 going through DFA, DMS.

16 Looking down at the next section, we have the
17 disclosure that Settling defendants agree not to oppose
18 the request of subclass counsel to unseal and release
19 materials, including briefs and documents, regarding
20 plaintiffs' motion for certification subclasses and
21 defendants' motion for summary judgment.

22 This only touches a tiny portion of the docket.
23 And worse, back in section 6, we were told all claims
24 that were asserted or that could have been asserted as
25 part of this litigation are released. So it does no

1 good for us farmers to know about these things if we
2 can't do anything about them.

3 There are other terms which involve DFA's internal
4 considerations, things like having the Northeast Area
5 Council look over our milk checks or the delegate
6 election process. But to ask DFA to consider activities
7 and policies which it has already considered, it has
8 already established, and it has already maintained is
9 pointless. This will not result in any change.

10 We are told that their financial reports need to be
11 prepared in accordance with GAAP, general accounting --
12 accepted accounting principles, and audited by a
13 national accepted accounting firm. In fact, they
14 already are. We have here a report from Ernst & Young,
15 DFA's 2012 audit.

16 But the point which I would like to address
17 regarding this requirement is that essentially they're
18 trying to weld a wooden hay wagon. You can't fix an
19 antitrust violation with an audit of financial
20 statements. In fact, I'm sure you are familiar with the
21 audit opinion, but I would like to read a couple
22 sentences to emphasize this point: "These financial
23 statements are the responsibility of the company's
24 management. Our responsibility is to express an opinion
25 on these financial statements based on our audits. We

1 were not engaged to perform an audit of the company's
2 internal control over financial reporting. Our audits
3 included consideration of internal control as a basis
4 for designing audit procedures appropriate, not for the
5 purpose of expressing an opinion on the effectiveness of
6 the company's internal control or financial reporting.
7 Accordingly, we express no such opinion."

8 Because -- because this internal control provision
9 is not currently done and was left out of the injunctive
10 relief, much of this audit oversight is left out.
11 Internal control is key to a company, and DFA has very
12 little of that.

13 I also noticed here down under (g)(iii), DFA board
14 members and senior executive management will continue to
15 execute annual conflict of interest certifications,
16 which are subject to review by DFA's own audit
17 committee. Essentially, the fox is promising not to
18 raid the chicken coop again.

19 But the problem is not the conflict of the board
20 members and directors per se. It's the conflict of the
21 organization which they are working for. DFA both
22 processes and produces milk. It's selling to itself and
23 creating -- that's where the conflict of interest is.
24 They waffle -- the material cost of their processors to
25 be lowest so that they can make as much profit as

1 possible upon that end. That's the conflict of
2 interest. It's not the individual members per se.

3 So with regard to cooperative change, to -- as I
4 said, but I really wanted to emphasize, to require DFA
5 to consider changing these practices, which it has
6 already considered, maintained, and adopted, is
7 pointless.

8 This has been demonstrated by a lack of change
9 following the Southeast settlement. Now in the
10 Southeast, if you want to attend the Southeast area
11 council meeting, you need written permission, and you
12 may stay for only as long as required for you to speak.

13 We were speaking to a few of the Southeast farmers
14 about the organizational changes following their
15 settlement there, and one farmer was telling us about
16 this -- one of -- this change in the Southeast
17 farmer who ran for a Southeast area council seat and was
18 elected. But after a little convincing by DFA, DMS, the
19 seat was filled not with the farmer who had won -- he
20 decided to drop out -- but the incumbent. And then the
21 term changed from two years to three years.

22 This is -- this is not -- these release are not a
23 grant of significant economic relief going forward.
24 This -- this is nothing. Our concessions are -- under
25 the release are legally binding. DFA's are not. This

1 is not equitable.

2 And worse, the lack of meaningful market relief
3 invalidates whatever monetary relief there is. PI count
4 spikes, which our milk inspectors tell us are
5 unexplainable, and which are widely experienced unless
6 you are a delegate, are a prime example.

7 Over our objections, counsel negotiated away our
8 request for independent milk testing. Consequently,
9 DFA, DMS can easily recover their monetary relief by
10 adjusting milk fees to reduce the amounts they pay out
11 in quality premiums. In 2013, DFA alone, not DMS,
12 marketed 60.6 billion pounds of milk. \$50 million
13 amounts to 8 cents per hundredweight of that.

14 Now, over the past several months, us, Richard
15 Swantak and, to the best my knowledge, other DFA members
16 in the area have lost 50 cents of premium -- per
17 hundredweight of premiums, not 8, as a result of new
18 balancing fees which supposedly occurred because there
19 was too much milk in the order.

20 We have no -- we have no way of verifying that, as
21 farmers, especially since -- my father might just have
22 wanted to touch on this point, but we live five miles up
23 the road from the Chobani milk plant, and while there
24 was this oversurplus of milk, he couldn't -- he couldn't
25 get enough milk to keep his -- his plant at full

1 capacity. It's -- it's not a good situation from our
2 point.

3 And because of this situation, Rick Smith was able
4 to state, in his July member update, that, speaking of
5 the settlement, this will not affect our operations in
6 the least. Taken at their own words, defendants are
7 giving up nothing.

8 Now, what the class is giving up: Any reasonable
9 settlement is by nature a compromise, plus the fact that
10 we must sacrifice some of our interests is a given. The
11 reason this settlement stands out as unfair and
12 unreasonable is that it sacrifices all of our interests.

13 First, it sacrifices the class's case. This is a
14 valuable asset to us because it has the potential to
15 recover some of what has been stolen from the class and
16 to bring an end to the illegal conduct which
17 countenances that.

18 We understand that the best-case potential monetary
19 recovery is a billion, 50 million dollars, treble
20 damages, and the -- the future nonmonetary value of
21 injunctive relief and fixing the industry problems which
22 caused this case is incalculable.

23 To surrender that at the eve of trial is a great
24 concession on our part. To surrender it for, as we have
25 seen, nothing is hardly short of unconscionable

1 procedurally, because we have no bargaining power
2 against our class counsel, and substantively, because of
3 the one-sided terms.

4 In exchange for these terms, which include a
5 release which extends beyond both the time period and
6 the subject matter of the claim, this class is not
7 granted anything meaningful. DFA can continue its
8 current full-supply agreements, patiently waiting until
9 the conclusion of the settlement period to punish any
10 farmers or cooperatives which dare to leave the fold,
11 and review its internal affairs to conclude that the
12 cooperative house already in perfect order. Again, our
13 concessions are binding; defendants' are not. That's
14 not equitable.

15 Second, it sacrifices our recovery. This class was
16 ready to proceed to trial, seeking potential treble
17 damages, seeking over a billion dollars, best case.
18 Under the settlement, we are left with the value of one
19 tractor tire as compensation for 22-plus years of market
20 oppression. True class action recovery on a class
21 member basis is typically somewhat small, but in this
22 case, we have a benchmark involving the same defendants
23 and the same conduct.

24 In the Southeast case, total recovery per farm,
25 before attorneys' fees, amounted to roughly \$50,000. In

1 the Northeast case, total recovery per farm, again,
2 before attorneys' fees, if the settlement goes through,
3 will be \$6,666.

4 Applying this measure of counsel's effectiveness,
5 their percentage of recovery will be 4.4 percent, which
6 is actually strikingly similar to the result in
7 Goldberger versus Integrated Resources. I don't know
8 how -- I'm the sure the Court must have worked with this
9 case before. If I could provide the citation for that,
10 it would be appreciated.

11 Because I noticed two things in the Goldberger
12 opinion. One thing which the court looked at was that a
13 lot of the work, which the attorneys were -- had
14 submitted in connection with the case, had already been
15 done for them.

16 In this case, the efforts of how they were in the
17 Southeast were benefited from by both Cohen Milstein and
18 BakerHostetler in the Northeast case, in addition to the
19 federal prosecutor work in 2004, with the investigation
20 back then.

21 And another thing was that the Goldberger court
22 found, because the likelihood of -- the likelihood of
23 nonpayment was slim, most of the defendants were
24 solvent, well-established individual entities, that did
25 not justify -- and, again, this is under -- upheld by

1 the Second Circuit Court of Appeals -- that did not
2 justify an increase in the attorneys' recovery.

3 But my point in this is that they would never
4 settle for a slap in the face of 4.4 percent, and
5 neither should the class be forced to.

6 Now, in addition to these facts, I would like to
7 bring the legal standard to bear. In evaluating the
8 settlement, I understand that the complexity of the
9 expense and the likely duration of this case is
10 something the Court must consider.

11 I do not dispute this is a complex case. The point
12 that I wish to emphasize is that much of this complexity
13 is in the past, not the future. We are not facing the
14 hurdles of establishing a claim, dismissal, discovery,
15 summary judgment. We are at the eve of trial.

16 It's not fair for us to give up our established
17 damage model, 341 million, for no injunctive relief, and
18 50 million, which, as I explained, DFA will recover that
19 at the drop of the hat.

20 And I'd also like to speak about -- as to the
21 reaction of the class. There's two things I would like
22 to emphasize.

23 First of all, I would like to bring to the Court's
24 attention the fact that the more massive a farm is, the
25 more milk it ships with DFA or a co-conspirator plant,

1 the higher incentive it has to come down on DFA's side
2 of this settlement.

3 One of our neighbors milking 2500 cows told us that
4 he could not afford to risk opposing this because he
5 needed a market for his milk. If a friend among the
6 higher-ups tells you you might want to send in a letter
7 in support, you have a very strong incentive to do so.
8 In fact, many of the letters in support, which I already
9 expressed, just -- that the writer was not familiar with
10 the particulars of the case, they just wanted it
11 settled.

12 The second thing I wanted to bring up is that many
13 of the farmers who express support for the settlement
14 express concerns which were very similar to ours at the
15 beginning of the case. We wanted -- we don't want the
16 attorneys to take advantage of this process, and we
17 wanted fundamental market change.

18 People are under the impression that the settlement
19 will provide fundamental market change, are less likely
20 to support it for the right reasons. But the fact is it
21 doesn't. None of these provisions will change the
22 market conditions, which we complained about initially
23 and which claim has withstood the hurdles of dismissal,
24 discovery, and summary judgment. My point is that if
25 many of these farmers were acquainted with the facts as

1 we are, they would be on our side of the room.

2 And I understand the risk going forward is a very
3 great consideration. And after discovery, we were ready
4 to proceed with the -- seeking the \$340 million in
5 damages. The council claimed that 130 million of this
6 is most likely unrecoverable because it falls outside
7 the statute of limitations. And our pleadings do not
8 include a fraudulent concealment claim to overcome that
9 statute.

10 And I may be a mere law student, but my immediate
11 thought when I heard that was Rule 15(b). Pleadings
12 are -- a liberal amendment of pleadings is allowed to
13 aid in the decision on the merits. But at any rate, the
14 Court specifically allowed the class to bring this
15 fraudulent concealment claim at trial in the motion for
16 summary judgment, and I'd like to point out that, in the
17 situation where one party acts as a fiduciary of
18 another, fraudulent concealment is most easy to
19 establish.

20 All that requires, under strict liability, is that
21 the -- the fiduciary acted other than in the best
22 interests of the party represented. That's easy to
23 establish for us because DFA and DMS does that every day
24 by, number one, processing milk; number two, by owning
25 import licenses. They're trying to sell our milk. Why

1 would they have import licenses to bring other milk in?

2 So I would ask the Court to please question
3 counsel's hastiness to discount that portion of our
4 damages. And the same applies to their hasty
5 consideration of the settlement in light of the best
6 possible recovery or, more accurately, in terms of the
7 darkness of the intended risk. Only as an afterthought
8 do they mention the -- our best possible recovery in
9 terms of injunctive relief. That starts with the money,
10 and that's where it stays.

11 I have brought up a couple things which, from
12 discussions with my parents and the class
13 representatives and other folks, I think this is our
14 best possible recovery. Because DFA acts other than for
15 the best -- best possible -- best interests of its
16 fiduciaries, it doesn't count as a cooperative for
17 purposes of Capper-Volstead Act. Therefore, it should
18 be held liable for nonsolicitation agreements and
19 sole-supply agreements. As we can establish, the value
20 of that is a billion dollars in treble damages.

21 Aside from that, the injunctive relief of agreeing
22 under penalty to provide for third-party voting, vote
23 counting, and third-party milk testing will solve a lot
24 of the problems which we farmers face. These things
25 which, if our counsel -- if our counsel had worked with

1 us and listened to us, these are the things which would
2 be on the table now, and we wouldn't be talking about
3 nonexistent injunctive relief.

4 The conspicuous absence of this, the entire
5 positive half of the spectrum -- you see, my
6 understanding is that we try to look at the best
7 possible recovery for the class and the worst possible
8 recovery, and then we have a spectrum upon which to
9 evaluate how reasonable the settlement is. The
10 conspicuous absence of the entire half of that spectrum
11 casts a lot of doubt on counsel's assertion that they
12 exercised professional judgment.

13 It seems to me that rather than arguing this
14 settlement is fair, reasonable, and adequate, they
15 argued, "We need this settlement; therefore, it's fair,
16 reasonable, and adequate." And a mixup like that is
17 something you lose major points for on law school exams,
18 and it's our prayer that this would not be rewarded in
19 practice.

20 I also want to speak about the fact that when the
21 notice initially went out in December regarding the
22 settlement, it had the wrong phone number. Farmers were
23 sent through a runaround before they even started.

24 And given that fact, and the fact that we had
25 Christmas and New Year's right up there plus our full

1 daily schedule, the fact that 500 claims were still
2 filed is a testament not to the skill of the American
3 lawyer but to the perseverance of the American farmer.

4 You see, your Honor, I have to agree with my
5 brother that when it comes for knowing what's best for
6 the farmers, these attorneys are potatoes in a corn
7 crib. It -- from the class perspective, we have no risk
8 going forward because this settlement leaves us with
9 nothing left to risk.

10 The monetary payment is -- as I said, it's a
11 tractor tire for 22 years of market oppression, and the
12 injunctive relief, the key thing which we were looking
13 to get out of this lawsuit, which -- farmers against
14 this settlement and for this settlement, that's what
15 they are looking for -- it's not going to result in any
16 change for us.

17 DFA has already clearly violated the law here, and
18 we need to hold them accountable for that. In January
19 2000, there were 18,000 farms in this Northeast order.
20 Today there's 12. I don't dispute that defendants and
21 those closest to them were quite literally making out
22 like bandits, but this industry and the lives and
23 communities it represents is in serious trouble.

24 Defendants and class counsel do not share these
25 risks and consequently have a joint interest opposed to

1 ours, yet this class could and still can get meaningful
2 relief, and we ask that our attorneys will not be
3 allowed to sell this out on us.

4 In order to discard the settlement and achieve
5 genuine fair, reasonable, and adequate relief for the
6 class, our only hope is your position as its guardian
7 and fiduciary.

8 And I want to thank you very much for the time and
9 the great honor of speaking on this issue.

10 THE COURT: Thank you.

11 Who else would like to speak?

12 Okay. Come on forward.

13 If you would please begin by stating and spelling
14 your name.

15 RALPH SITTS: Your Honor, my name is Ralph
16 Sitts; R-a-l-p-h, S-i-t-t-s.

17 THE COURT: Mr. Sitts is a class
18 representative.

19 RALPH SITTS: Excuse me?

20 THE COURT: You are a class representative.

21 RALPH SITTS: Yes, I am.

22 Okay. Thank you, your Honor, for this opportunity.

23 I have been a lead plaintiff from the beginning. I
24 have six grandsons who we hope some of whom would carry
25 on the family farm to make five generations in dairying.

1 I take my responsibilities to my family and my dairy
2 farming seriously. As you can see, I have a vested
3 interest.

4 A quick history, in my opinion, on how the dairy
5 farming industry got to where it is today:

6 At the very first, a few dairy neighbors got
7 together to form a bargaining co-op to market their
8 milk. With the addition of other producers in this
9 co-op, it became more difficult for dairy farmers to
10 find a time to manage its everyday operations. Hence,
11 managers were hired, ultimately a CEO.

12 Some co-ops moved into petroleum sales, building
13 material sales, insurance, baking, et cetera, all from
14 the revenues generated from milk sales. This is where
15 dairymen, in my opinion, who were members of the co-op,
16 should have demanded this money, instead of being
17 invested in these ventures, be returned to the dairy
18 farmers.

19 The basic rule of thumb in retail is to buy cheap
20 and sell high. In this case, hold down the price of the
21 raw material milk and this would increase profits at the
22 retail end. These CEOs knew this, and where it failed
23 was that the co-ops did not return the profits back to
24 the dairymen. The CEOs and the boards made profits for
25 the co-ops, but they did not return these profits in the

1 milk checks to the farmers.

2 In the Dean settlement which was consummated during
3 the holiday season, we were coerced into an agreement.
4 We were discouraged from interaction among plaintiffs.
5 The olds adage of divide and conquer applies.

6 In the Dean settlement, we were told the settlement
7 on the table is our only option, a one-time deal that
8 must be agreed to immediately. If we consent to this
9 settlement, it will send a favorable precedent in the
10 DFA case, which will be for more injunctive reliefs and
11 for hundreds of millions of dollars.

12 To help with certification of the class, we must
13 sign now. All this, despite the discovery process had
14 yet to be completed. On a conference call, we were told
15 by our counsel that there were -- should be no
16 interaction between plaintiffs in regards to this case
17 without attorneys present, insinuating we could face
18 possible legal action.

19 In February, on Thursday, December -- or I'm sorry.

20 In fact, on Thursday, December 23rd, 2010, the day
21 the Dean settlement was filed, our counsel -- our
22 counsel contacted us individually, Ralph and Garret
23 Sitts on one line with one lawyer, and Alice Allen on
24 another line with another lawyer. Prior to this, any
25 settlement discussions were handled as a group

1 conference call. We were unable to hear what was being
2 said to or being said by Alice Allen, the other lead
3 plaintiff.

4 On this call, after a lengthy and heated discussion
5 with counsel, it became obvious to us that our counsel
6 was not going to honor our settlement points and the
7 settlement was a done deal. This was totally unfair to
8 the class. We felt that we, the class rep, should stand
9 our ground in the face of this coercion, but since
10 counsel had informed us earlier that we could not
11 discuss the case amongst ourselves without an attorney
12 present, we understood that we couldn't do anything
13 without unknown repercussions. So under this
14 misrepresentation we agreed to the settlement.

15 Fast-forward to the DFA, DMS suit. I learned to be
16 successful -- I learned in farming to be successful you
17 can't make the same mistake twice. I soon became aware
18 that some of the tactics that were used in the Dean
19 settlement was being repeated in our counsel and used us
20 in this settlement. It was like a page from today's
21 government: Hurry up and sign this and read what's in
22 it later.

23 Maybe somewhere in law school there is a course in
24 Class Action Suit 101 with a guideline because we, the
25 plaintiffs, became aware of similar tactics by our

1 lawyers as in the Dean settlement. My father told me
2 many years ago, Fool me once, shame on you; fool me
3 twice, shame on me. The warning signs were there.

4 We, as plaintiffs, fully appreciate the time and
5 resources our counsel has dedicated to this case. Our
6 counsel will undoubtedly move on to the next case with
7 no fear of their livelihoods or futures being
8 jeopardized.

9 The defendants in this case -- which was written by
10 our counsel and DFA without us, the plaintiffs, being
11 present at the table -- have these protective
12 provisions:

13 Section 1, paragraph 1.17, under Released Parties,
14 and I quote, means the settling defendants, their
15 predecessors, successors, parents, subsidiaries,
16 affiliates, representatives of any kind, all entities
17 which they have an ownership interest, shareholders,
18 partners, members, owners of any kind, attorneys, and
19 any and all past and present officers, directors,
20 employees, managing agents, and controlling persons of
21 such entities, including any past or present officers of
22 these parties originally -- originally named as a
23 defendant, but not any other defendant, end of quote.

24 Section 6, paragraph 6.1, line four, and I quote:
25 Release and Covenant Not to Sue: Parties shall be

1 deemed to have, and by operation of the judgment shall
2 have, fully, finally, and forever released and
3 discharged all released claims against the released
4 party, shall have covenanted not to sue any of the
5 released parties with respect to all released claims,
6 and shall be permanently barred and enjoined from
7 instituting, commencing, prosecuting, or asserting any
8 released claims against any of the release parties, end
9 of quote.

10 This is totally unfair and unreasonable to the
11 class and the class members' ability for current or
12 future questions or actions to DFA.

13 As for the lead plaintiffs, under section 7.3,
14 letter (i), and I quote: Settling defendants agree they
15 will not discriminate or retaliate, or cause
16 discrimination or retaliation, of any kind whatsoever in
17 response to the participation in support of the subclass
18 representatives or any other farmer in this action, end
19 of quote.

20 A very noble gesture. But without any changes in
21 their control of our milk check and DFA owning the labs
22 that test our milk, how will we defend ourselves, and
23 who will be there to make sure we are treated fairly?
24 We have asked for independent lab testing but with no
25 results. Again, DFA maintains complete control.

1 The lawyers have used our names, our reputations.
2 We have been vilified to our neighbors and fellow
3 co-ops, fellow producers. The co-ops have threatened
4 our safety and livelihood. The co-ops control our milk
5 checks, their laboratories that test our milk
6 for bacteria, drugs, protein, and butterfat. In short,
7 they, DFA, could put us out of business tomorrow.

8 Yet collectively, what we may receive above the
9 class hardly seems equitable or fair given the facts
10 that our businesses and livelihoods could be ruined. We
11 have spent many hours on this case, and we feel the
12 absence of similar guarantees and protections, as the
13 defendants, that the monetary compensation for the lead
14 plaintiffs is inadequate and should be more in line with
15 our risks.

16 Your Honor, I would just like to say, as an entire
17 class, we help feed the world and are stewards of the
18 land. My son, Garret, and myself did not enter into
19 this lawsuit with a monetary award in mind. The fact --
20 that fact was entered into the record for us by the lead
21 plaintiffs -- that fact was entered into the record for
22 us, the lead plaintiffs, by Attorney Kit Pierson, at the
23 Dean settlement fairness hearing.

24 We entered into this process as a fourth option.
25 The co-op, which myself was a member for several years,

1 was our first. Questions to Clyde Rutherford and Rick
2 Smith at co-op meetings were handled with ridicule and
3 avoiding the issue.

4 Our next step, the executive branch, we were told
5 the enormity and perplexity of the case was beyond the
6 scope of their control. In the legislative branch, our
7 representative gave us an ear, but anything that was
8 helpful failed to materialize -- materialize.

9 Our last hope is the judicial branch. These
10 decisions made today may not be earth-shattering, but
11 they will affect all dairies -- all size dairy farms
12 severely. The small- and mid-sized farms could be
13 devastated because of their limit to acquire capital and
14 the reality that they must market their milk through a
15 co-op.

16 The defendants, DFA, who control the milk price,
17 the cost of hauling, premiums paid on protein,
18 butterfat, et cetera, they also control marketing and
19 hauling costs and other deductions, for whatever the
20 co-op deems necessary, at the co-op's discretion.

21 The defendants also control the labs which test for
22 bacteria and drugs, which with a positive test could
23 result in an individual paying for a load of adulterated
24 milk, \$20,000 plus, or a loss of market completely.

25 In conclusion, your Honor, I strongly urge that

1 this settlement be denied. It is unfair to the class
2 because DFA admits to no wrongdoing and is forever
3 protected from any further actions. It is unreasonable
4 because DMS still writes the checks -- Dairy Marketing
5 Service still writes the checks and controls the milk
6 for thousands of non-co-op members. And it is
7 inadequate because the injunctive reliefs do very little
8 to change DFA's operations.

9 And the monetary award is one-third of the
10 Southeast/DFA lawsuit settlement. In the Southeast,
11 there were only 6,000 producers, compared to 12,000 in
12 the Northeast. Therefore, one-third of the money is
13 spread over twice as many producers. Mathematically,
14 DFA has a sweetheart deal.

15 The cooperatives have been an integral part of the
16 dairy industry. Through the years, cooperatives have
17 made many positive moves for the dairy farmers, but DFA
18 and DMS have stepped beyond the definition of a co-op.
19 We feel that with DFA and DMS's current monopolistic and
20 monopsonistic practices, this allows for egregious
21 controls over dairy farmers.

22 DFA and DMS have become judge and jury over our
23 livelihood. Your Honor, there are many points, much of
24 which will be addressed by the other lead plaintiffs and
25 class members, as to what is unfair and what is

1 unreasonable with DFA and DMS. Two issues that must be
2 resolved: DMS, Dairy Marketing Services, must be
3 abolished.

4 Without DMS control of non-co-op members' milk,
5 DFA's full supply contracts will be very tough to meet,
6 thus allowing for more competition and, one would hope,
7 a better price for dairymen.

8 Dairy farmers who consciously made a choice not to
9 join DFA should not have their laboratory work or their
10 milk check controlled by DFA and DMS. In conjunction
11 with this, there has to be independent lab testing for
12 all dairymen to remove any chance of or any suspicion of
13 improprieties by DFA and DMS.

14 Thank you, your Honor, for giving me a chance to
15 speak.

16 THE COURT: Thank you. Who would like to
17 speak next?

18 RICHARD SWANTAK: I will.

19 THE COURT: So, again, if you will just state
20 and spell your name first.

21 RICHARD SWANTAK: My name is Richard
22 Swantak, S-w-a-n-t-a-k.

23 THE COURT: And Mr. Swantak is also a class
24 representative.

25 RICHARD SWANTAK: Good morning, your Honor,

1 and all present.

2 We are a fourth-generation dairy in Delaware
3 County, New York, that is geographically located in the
4 northern Catskills. After graduating college in 1968,
5 receiving a B.S. in business administration with a major
6 in accounting and personnel, I returned to the farm and
7 worked with my parents until 1977 when I purchased the
8 farm.

9 I have watched dairy farm numbers dwindle in
10 Delaware County from 598 in 1982, producing 414 million
11 pounds, to 157 farms in 2007, producing 157 million
12 pounds. Out of my three neighboring farms, two have
13 exited in 2014; and the third, in all likelihood, will
14 be gone this year as the three brothers and one sister's
15 average age is 70, and their health issues have become
16 insurmountable.

17 Also important to note that the average age of the
18 American dairy farmer is greater than 57. Dairy farmers
19 are reluctant to advise their children, families, to
20 continue or to enter the dairy business as their
21 experience has proven the milk price over the decades
22 struggles to approach the cost of production.

23 I have watched neighboring farms, myself included,
24 look the other way, ignore their buildings' repair, keep
25 corn planters, choppers, tractors, and so many pieces of

1 equipment, 20, 30, 40, and 50 years, so as to hopefully
2 hang on. At the same time, we observe inspectors'
3 vehicles that visit the farm are nearly brand-new
4 vehicles.

5 Also interesting for all here, I was not a
6 representative in the Northeast/Dean settlement but
7 found it notable to read that the DFA, DMS executives
8 state that, quote, A small, one-time cash payment is far
9 overshadowed by the long-term negative impact to
10 farmers' wallets. Exhibit 1.

11 And to familiarize some of youse who may not
12 realize it, the Northeast/Dean settlement was 30 million
13 for 12,000-plus producers, where the Southeast
14 settlement was 140 million for 6,000 producers.

15 Also interesting was an article in the Wall Street
16 Journal in 2011 titled, "Farmers, Milk Buyers Settle
17 Antitrust Suit." In the article, the last sentence
18 states: Mr. -- in quotation marks -- excuse me.
19 Mr. Smith said the settlement would not hurt the
20 cooperative which has cash to pay the 158.6 million.

21 I am not impressed with our class counsel stating
22 the burdensome pioneer work they have done in this -- in
23 this suit as it appears that many of the same law firms
24 and attorneys were major players in the Southeast dairy
25 settlement, totaling 303.6 million with only half the

1 number of producers.

2 In 2014, I have watched my additional premium
3 dwindle from 44 cents in February to zero as of
4 November. Also, my BST-free premium of 13 cents has
5 dropped to 6 cents. Those 51 cents are -- needed by the
6 dairymen are likely to be a factor in the continuing
7 downward numbers of operating dairy farms in the
8 Northeast.

9 A friend from Columbus, Ohio, called me this past
10 fall asking if the growth hormone was still being used
11 in Grade A whole milk. I replied, "I'm not sure." So
12 without question, the public does have concern, if
13 growth hormones are being used, why -- why lowering the
14 premium?

15 On January 8th, I did call DMS 800 number in
16 Syracuse and got nothing but an answering machine. I
17 left two questions: One, why have premiums been dropped
18 or lowered; and, two, why hasn't hauling costs dropped.

19 The next day I received a call and was told that
20 there was too much milk, and they were considering
21 dropping 41 producers, and that hauling takes a few
22 months to show up on the milk jug.

23 I often listen to the NPR radio and heard a
24 trucking firm owner being interviewed this past
25 December, and he was asked about his thoughts on the

1 substantial drop in fuel prices. He explained that he
2 was able to order 15 brand-new trucks, something he was
3 never able to consider before.

4 Many news media sources have interviewed citizens
5 around the United States asking how they have been
6 affected by the significant plummet in fuel prices over
7 the past six months. It has been much of the same
8 opinion that they are thrilled to have the additional
9 money that was always spent on fuel now in the pots for
10 other needs.

11 I did have collective bargaining in my college
12 courses, however, I don't think one needs those credit
13 hours to recognize that here we go again as dairy
14 farmers being the last to reap the positive effects of
15 \$45 oil compared to \$100 oil.

16 Another concern of utmost importance is the need
17 for an independent laboratory to do the milk testing.
18 Over the years, I have had several farmers mention to me
19 that they were not happy with their butterfat test as it
20 often was two- to three-tenths lower than their DHI
21 records supported.

22 In addition, the last several years, most dairy
23 farmers have been upset by sudden spikes in a bacteria
24 test called PI, preliminary incubation. This figure
25 seems to spike for no apparent reason on many farms, and

1 it takes away the average quality numbers that are
2 needed to receive a quality premium. When asking our
3 inspectors what causes these sudden increases in PI
4 counts, or even what is the PI count, we are given an
5 answer that -- an answer that they themselves can't
6 really explain what the test consists of.

7 I would not feel I have represented my 12,000-plus
8 class producers fairly if I were to go along with this
9 fraction of the settlement that the Southeast Orders 5
10 and 7 received of 300.6 million for 6,000 producers.
11 Being beat up on the small Dean settlement of 30
12 million, I don't feel comfortable allowing DFA and DMS
13 to slap the Northeast dairymen harder and more abusively
14 than ever with a 40-million settlement that should be
15 more in line with a 250-million settlement minimum.

16 I also think the DF -- that -- excuse me. I also
17 think that DFA and DMS executives will feel better of
18 their settlement if it is more in concert with the
19 Southeast settlement's monetary numbers in total. The
20 Dean Foods managers will not be able to read on their
21 computers the small settlement that DFA and DMS gave
22 their Northeast producers. With a fine comparable
23 settlement, I believe it should be a strong building
24 block of trust needed to help secure the existence and
25 good relationship that we, as producers, seek.

1 The United States citizen has been blessed with a
2 quality dairy product, as well as abundance. Only the
3 seven-day hard work and responsibility of the dairy
4 producer has this been possible. If we here in the
5 Northeast erode the fortitude and good will of the
6 American dairy farmer, we will have done an injustice to
7 all.

8 And then I just added this last note: I am hoping
9 the sunshine I experienced walking in this courthouse
10 this morning will help shed light on this case.

11 Thank you, your Honor.

12 THE COURT: All right. Thank you.

13 Does anybody else want to speak?

14 Yes.

15 GARRET SITTS: My name's Garret Sitts,
16 G-a-r-r-e-t, S-i-t-t-s. I am a named class rep.

17 Hello, your Honor. My name is Garret Sitts. I
18 would like to make it very clear that I would be willing
19 to accept a settlement that offered real market relief
20 over going to trial.

21 THE COURT: I am going to ask you to move a
22 little bit closer to the microphone, and -- you are soft
23 spoken like me, so really project your voice. Okay?

24 GARRET SITTS: Okay. You want me to start
25 over? I am not --

1 THE COURT: No, I heard you.

2 GARRET SITTS: I am not a public speaker. I'm
3 sorry.

4 THE COURT: You're doing fine. Go ahead.

5 GARRET SITTS: Sorry. I will just start --
6 I -- I would like to make it very clear that I would be
7 willing to accept a settlement that offered real market
8 relief over going to trial. I did not enter into this
9 litigation looking for a monetary award, and what I am
10 looking for is market relief, a market that is not
11 controlled and manipulated by the defendants.

12 Some issues I have with the proposed settlement,
13 the relief: Section (a). Settling defendants, during
14 terms of this agreement, will not enter into full-supply
15 agreements for the supply or sale of raw milk in
16 Order 1; however, settling defendants retain the right
17 to renew existing full-supply agreements.

18 The defendants currently have a monopoly on plant
19 access, and this provision allows the defendants to
20 maintain that monopoly by renewing existing full-supply
21 agreements. No relief.

22 Paragraph -- or section (d) of the relief:
23 Settling defendants agree any cooperative member,
24 associate, affiliate of DFA, DMS, in Order 1 may, during
25 the times of this agreement, terminate its relationship

1 with DFA, DMS upon no more than 90 days' written notice
2 without penalty.

3 I believe this needs to include language that
4 allows processors to terminate their relationship
5 full-supply agreements with the defendants as well. So
6 if the defendants are allowed to maintain their monopoly
7 on plant access, the farmer who chooses to terminate
8 their membership, relationship with the defendants will
9 have their access to plants blocked by full-supply
10 agreements. The end result is the producer is not going
11 to be able to leave because they will not be able to
12 find a market for their milk.

13 Perhaps the most outrageous section of this
14 settlement to me is the release of claims. The named
15 defendants are DFA and DMS. Why did their employees,
16 subsidiaries, joint ventures, partners, et cetera, need
17 to be released from legal liabilities? My question is,
18 what have they done?

19 I challenge the attorneys on both sides to produce
20 a class action settlement approved with a release of
21 claims as broad and encompassing as this one. Where is
22 the precedence?

23 In paragraph (i), Settling defendants -- that they
24 will not discriminate or retaliate, or cause
25 discrimination or -- of any kind whatsoever in response

1 to the participation support of the subclass
2 representatives, and any -- or any other farm -- farmer
3 in this action.

4 My question is who bears the burden of proof? Who
5 will enforce this? The fact is the defendants own --
6 own Dairy One, a milk quality testing lab, which is used
7 to test producers' milk quality, which results affect
8 producers pay price via premiums. I strongly believe
9 the defendants use their ownership and control of Dairy
10 One to control, intimidate, and eliminate troublemakers,
11 which this settlement fails to address.

12 An example: Our farm was a member of DFA from 1998
13 through 2007. In that time period, we were very
14 critical and outspoken of the defendants' business
15 practices. In late 2007, we left DFA and began shipping
16 to Worcester Creameries. At that time, Worcester
17 Creameries was the only processor in our geographical
18 area that was not affiliated with the defendants.

19 In the time that we were members of DFA, we had
20 three spoiled loads of milk, a minimum of 25 illegal
21 bacteria PI, somatic cell, et cetera, counts resulting
22 in tens of thousands of dollars in lost income.

23 We became members -- or started shipping with
24 Worcester Creameries in late 2007. From 2007 to date,
25 we have had zero spoiled loads of milk, zero illegal

1 counts, and this is over seven years with zero milk
2 quality issues. I have changed nothing, your Honor. I
3 still do the same -- milk the cows and handle the milk
4 the same way.

5 One of the defendants' employees has even gone as
6 far as to tell my neighbor not to associate with me
7 because I really F'd things up and I may disappear one
8 day.

9 The Dean settlement: We were unhappy with the Dean
10 settlement because the lawyers were willing to settle
11 before the discovery process was completed. We were
12 told by our attorneys that Dean's market share was only
13 30 percent and we had a weak case, and that's why we
14 needed to settle.

15 We did not believe this. We believed their market
16 share to be more like 70 to 90 percent. We acquired
17 maps from the market administrators of plants,
18 locations, plants' IDs, compared them to the
19 spreadsheets that the attorneys had. The maps from the
20 market administrator clearly pointed out that they had
21 left out a large number of plants. We tried to point
22 this out to the attorneys. They were unwilling to
23 accept it.

24 We were led to believe that it was illegal to
25 discuss the case without counsel present. On the

1 conference call when the settlement was filed, the day
2 of the settlement was filed, one of the lawyers went on
3 a rant of profanity and threatened us.

4 We were discouraged from attending our fair -- the
5 fairness hearing. I was later told by a man, John
6 Bunting, who is pretty instrumental in putting these
7 cases together -- in my opinion, he is an expert -- that
8 after preliminary approval of the Dean settlement and
9 before the fairness hearing, Cohen's expert that did the
10 market share on Dean contacted them and told them that
11 they grossly underestimated Dean's market share. This
12 was never passed on to us.

13 In the last conference call with the DFA settlement
14 we had, we were informed that they -- they did not have
15 to have our support to file. We demanded the reasons
16 for our objections be attached to the filing. We were
17 told no, they would not. I believe if that was done,
18 that would have saved us all a lot of time and
19 aggravation. They did tell us that our objections would
20 be made more than clear to you. Your order denying
21 preliminary approval was obvious those questions were
22 not made more than clear to you.

23 So on July 14th, Jonathan and Claudia Haar, Richard
24 Swantak, Ralph Sitts, Garret Sitts, and Alice Allen on a
25 speakerphone, met to draft opposition to the proposed

1 settlement in response to the questions raised in the
2 denial of preliminary approval. At no time did Alice
3 Allen express opposition to this document. In fact,
4 Alice had suggested things that -- things to be included
5 and they were.

6 Later that day, the final draft of that document
7 was e-mailed to Alice Allen for her review. July 15th,
8 in the morning, I spoke with Alice, and at that time she
9 was okay with the contents of the document and was okay
10 with it being filed. We sent it to the attorneys and
11 demanded it be filed. We were told it would be
12 submitted. It was submitted *in camera*. We did not ask
13 for it to be submitted *in camera*.

14 Because it was submitted *in camera*, we had no way
15 of verifying that was our actual document, our actual
16 words. We were told by the clerk that there was
17 something submitted *in camera*.

18 I have an e-mail here from one of the attorneys to
19 Ralph and Alice and Vera. It says, As we previously
20 informed you, the statement regarding the settlement
21 prepared by some of you was delivered to the court on
22 July 23rd to be filed *in camera* to preserve the
23 confidentiality of attorney/client communications
24 referenced in the settlement -- or the statement,
25 rather.

1 In subclass counsel's response, Yesterday the
2 court's clerk contacted us and relayed that Judge Reese
3 (sic) would rather not view attorney/client
4 communications, and that subclass counsel providing a
5 simple statement regarding the basis of class
6 representatives' opposition to the proposed settlement
7 would suffice for Judge Reese.

8 THE COURT: So it's "Judge Reiss," but that's
9 okay.

10 GARRET SITTS: Sorry, I'm -- I'm sorry.

11 THE COURT: That's all right.

12 GARRET SITTS: I'm nervous.

13 THE COURT: That's all right.

14 GARRET SITTS: Pursuant to the court's
15 request, sub counsel prepared the attached simple
16 statement to be filed in supplement to the July 23rd
17 submission: Please feel free to call if you have any
18 questions.

19 According to the clerk's office, there's no record
20 of that communication.

21 And then I have one last thing that really blows my
22 behind. It's a statement from DFA. It was released
23 after the denial of preliminary approval. It was
24 written by Brad Keating, K-e-a-t-i-n-g. He is the chief
25 operating officer of DFA's Northeast dairy.

1 It says, Statement: DFA explains objections filed
2 in Northeast lawsuit. Dairy Farmers of America,
3 Incorporated, and Dairy Marketing Services, LLC, have
4 defended ourselves since this lawsuit was filed in 2009,
5 and we continue to do so. This lawsuit has no merit.

6 The activities of DFA, DMS, and other affiliated
7 milk marketing cooperatives in the Northeast improve pay
8 price and stabilize the milk marketing for cooperative
9 members and independent producers alike. As a
10 farmer-owned cooperative, we worked hard to ensure the
11 success, profitability of dairy farmers. It is our
12 responsibility and obligation to act in their best
13 interests. We take this very seriously.

14 The proposed settlement recently announced by the
15 plaintiffs' attorneys, who represent some of our
16 members, as well as dairy farmers who market milk
17 through DMS, cause us serious concern. The proposed
18 settlement demonstrates the best interest of dairy
19 farmers are not being given full consideration. The
20 settlement favors one segment of the class at the
21 expense of others, creating winners and losers by giving
22 market access to some and taking market access away from
23 others. This is a clear conflict of interest by
24 plaintiffs' attorneys.

25 Additionally, despite reports that this settlement

1 is an economic windfall for dairy farmers, we believe
2 that, if approved, the settlement has the potential to
3 harm all producers in the Northeast effectively by
4 lowering market price for milk.

5 My question is, do we have a settlement,
6 your Honor? It seems to me the defendants have
7 withdrawn and publicly trashed the settlement. I would
8 like to know who ordered Mr. Keating to write this, to
9 disseminate it, and for what reason?

10 THE COURT: Thank you.

11 GARRET SITTS: Would you like --

12 THE COURT: Yeah, if you would like -- we will
13 make sure that we have copies for everybody, and
14 we'll -- if you want to submit it, we will take it. So
15 you can approach, and Miss Ruddy will take it from you,
16 and she will make copies on our break.

17 And this is about a good time for a break, so we
18 take one midmorning, 10 to 15 minutes, and then we will
19 come back and see if anybody else wants to be heard.

20 Anything further before we take our break?

21 Okay. Thank you.

22 (Court was in recess at 10:38 a.m.)

23 (The following was held in open court at 10:52 a.m.)

24 THE COURT: We are back on the record in Alice
25 Allen, et al., versus Dairy Farmers of America, et al.

1 And we are in our fairness hearing.

2 And let me ask if we have any members of the class
3 who also want to speak?

4 Yes. And would you --

5 MIKE EBY: Yes, my name is Mike Eby.

6 THE COURT: And could you spell your last
7 name?

8 MIKE EBY: E-b-y.

9 Dear United States District Court for the District
10 of Vermont:

11 I am the seventh-generation Lancaster County,
12 Pennsylvania, dairy farmer and member of Land O'Lakes
13 cooperative marketing Grade A in Federal 1 throughout
14 the entirety of the time period covered by the proposed
15 Northeast dairy settlement.

16 In the interests of the ability for future
17 generations to continue my family's dairy farming
18 tradition, I strongly object to the proposed settlement
19 of this case. I have brought my eighth-generation son
20 along with me today to show the importance of this
21 matter.

22 My objection is based upon the following reasons:
23 First, the amount of the proposed settlement is
24 \$50 million or approximately 16 cents per hundredweight.
25 This insignificant amount falls way short of the actual

1 alleged damages caused by DFA, DMS anticompetitive
2 behavior.

3 The damage amounts calculated by Dr. Kalt and
4 Rausser range from 41 cents to 69 cents. And just as a
5 comparison, I brought my Land O'Lakes 2003 milk check
6 with me, which was one of the lowest years during the
7 time period of dairy farming for me, in the amount of
8 \$10.80 for my mailbox price.

9 By the nature of the scrutiny expected, these
10 calculations of 41 to 69 cents are themselves very
11 conservative and would be considered a settlement. The
12 same defendants in the recent Southeast case paid their
13 members approximately 300 million as compensation for
14 the same anticompetitive behavior.

15 Second, the -- more important than the dollar
16 amount is the accountability for the exoneration from
17 the behavior alleged in the suit that will only occur if
18 the case goes to trial. As dairy farmers, we need to
19 have confidence that our farmer-owned cooperatives truly
20 act in our best interest. The information that would
21 come out in a trial or be buried in a settlement is
22 vital to the confidence. This should not be an option
23 for the defendants to pay a relatively small settlement
24 fee for the privilege of continuing business as usual.

25 And I'd like to read that last sentence again: It

1 should not be an option for the defendants to pay a
2 relatively small fee settlement for the privilege of
3 continuing business as usual.

4 Thank you, your Honor.

5 THE COURT: Thank you.

6 Somebody from that same row?

7 Yes.

8 ALICE ALLEN: Thank you, your Honor. My
9 name is Alice Allen. And unfortunately, I need to read
10 so I don't draw a blank here.

11 My name is Alice Allen. I began milking cows for
12 my neighbors in 1964. Milking cows helped pay my
13 tuition through four years of college at the University
14 of New Hampshire.

15 In 1973, upon receiving my bachelor's degree in
16 dairy science from UNH, I began raising dairy heifers on
17 a rented farm to start my own herd. I started shipping
18 milk in July of 1975 to HP Hood in Boston.

19 In 1983, as a member of a then-young dairy farmer
20 association, we began our first milk marketing study
21 group. For the past 30 years, this group, in one form
22 or another, has succeeded in bringing nationally
23 respected speakers to our meetings to help dairy farmers
24 educate ourselves on marketing issues such as dangers of
25 massive consolidation, monopoly, monopsony, and possible

1 conspiracy.

2 With expressed interest from our legislators, I was
3 asked to go to Washington, D.C., in the late summer of
4 2001 to meet with staff of House and Senate Judiciary
5 Committee members to detail the market-related struggles
6 of Northeast dairy farmers. We Northeast dairy farmers
7 had high hopes that the federal government would in some
8 way intervene and begin enforcing regulations such as --
9 Capper-Volstead and the historical portions of the
10 agriculture adjustment acts dating back to the 1930s.
11 There was much discussion but very little positive
12 action from our government.

13 The proposed settlement is not perfect and not all
14 I might have hoped for. And I am not going to argue
15 with anything that the other named plaintiffs said, as I
16 am a named plaintiff in the non-DFA subclass.

17 The settlement is a compromise between both sides.
18 And there are risks to both sides in going to trial.
19 And the reason it seems that I had to disagree with my
20 co-class reps is, when we were going to have a unified
21 front and fight the settlement, I had great anxiety
22 about it, knowing that going to trial might not serve
23 our farmers any better.

24 I had such upset about it that I went to see my
25 regular lawyer, Bob Gensburg in St. Johnsbury, Vermont,

1 who has been following the case and also knows me
2 from -- from years of dairy farming. And he said, "If
3 the court wanted only one opinion, there would only be
4 one named plaintiff. You have to go with what you
5 believe and how you believe you can best represent your
6 farmer neighbors, to the best of your ability."

7 So at that point, I had to say that I was going to
8 support the settlement. It was not a perfect settlement
9 by any stretch of anyone's imagination. But I also have
10 to say that this is the first time in my career and
11 life, having been involved in dairy long before I was
12 old enough to milk cows -- this is the first time we
13 have made it this far. And I think farmers need to
14 realize that we wouldn't be this far without the late
15 John Bunting having been a very articulate and dedicated
16 dairy farmer who understood these issues and had the
17 ability to bring these issues to the firm of Cohen
18 Milstein, who agreed to take the case. John passed away
19 in November, and he is a loss to all of us.

20 But I do believe that the issues that are now
21 public record through this case are very, very important
22 for farmers to pay attention to. I am disappointed that
23 there aren't more farmers in this room on either side.
24 I think -- I have seen more farmers at a machinery
25 auction than I am seeing here. That may be partly due

1 to the fact that the dairy day of the Vermont Farm Show
2 is today. I'm not sure.

3 But I believe that the really -- the only way for
4 farmers to have a say in this is to become very, very
5 educated and to know that the facts, that have been
6 brought out through this case need to be understood by
7 all farmers; that we can't just fight amongst ourselves,
8 that we have to create a better cooperative. And I am
9 at a loss to say how to do that except by being
10 involved.

11 I have been involved as much as I could my entire
12 life. And my farmers that I worked for in the early
13 days encouraged me to get involved and stay involved,
14 hence the milk marketing study group.

15 And I know that there needs to be more structural
16 relief, but I still do believe that this being the first
17 and only time that Northeast farmers have gotten this
18 far, it's a very important milestone that we should not
19 neglect, that we should not downplay. It should be an
20 honor that we have gotten this far.

21 I have talked with several of the named plaintiffs
22 in the Southeast case. That case, yes, it got more
23 money for those farmers, but the case had a lot of
24 different facts than our case. It was a different --
25 different case altogether, as I understand it from those

1 named plaintiffs. They're impressed that we have gotten
2 this far in the Northeast, knowing what they have
3 learned about our case.

4 While I would like a better settlement, I know
5 there is no guarantee that we would prevail at trial.
6 Having steadfastly remained committed to this case by
7 representing the best interests of Northeast dairy
8 farmers, I still -- in spite of everything I am hearing
9 today, I do not believe justice would be any better
10 served for Northeast dairy farmers by going to trial.
11 Not only is the outcome of the trial uncertain, but I do
12 not believe that the Court is in a position to take over
13 the management of milk marketing in the Northeast.

14 What I do believe, as I said before, is for any
15 positive changes to occur in dairy marketing in the
16 future, farmers themselves -- each and every dairy
17 farmer -- must become involved. You are more
18 involved -- we are all more involved in our dairy
19 genetics, in our farm machinery, and growing crops, but
20 milk is what we survive on. The income from selling our
21 milk is the most important thing.

22 We need to take a more active role and not just
23 leave it up to the few who have spoken here who are
24 trying their best to bring relief to the Northeast dairy
25 farmers. We all have to pay attention, whether you are

1 DFA or non-DFA. It doesn't matter. We all -- every
2 single dairy farmer must pay attention.

3 And if you don't agree with what some of your
4 neighboring farmers are saying, read the documents.
5 Ask -- if you cannot understand some of the documents, I
6 will do my best and ask the attorneys to find people who
7 can help us understand what's in these documents. Some
8 of them are very revealing. But it, again, is up to the
9 dairy farmers.

10 And I know that seems like a very difficult request
11 for farmers because it's time consuming, it's difficult,
12 and I have to admit sometimes it's very boring to read
13 some of this. But it is the only way -- and I repeat
14 the only way -- every farmer getting involved and
15 understanding the situation.

16 My uncles who were producer-dealers years ago --
17 they have all since passed away -- they said, "We always
18 thought it was going to get better but it never did."
19 This is our chance. There are facts. This case has
20 brought out many facts that were heretofore hidden from
21 our sight as dairy farmers. But there's a lot of
22 information out there now, and it is up to us. You
23 don't like what you see going on, you have got to go
24 after it, and you have got to pay attention.

25 Thank you very much for the privilege of speaking.

1 THE COURT: All right. Thank you.

2 JONATHAN HAAR: Good morning.

3 THE COURT: Good morning.

4 JONATHAN HAAR: My name is Jonathan Haar.

5 That's H-a-a-r. I am a class representative for the
6 DFA, DMS subclass.

7 First, I want to thank you, your Honor, for the
8 opportunity to address this Court on behalf of the dairy
9 farmers I represent. This has proven to be a daunting
10 project. I learned over the last couple weeks that my
11 three youngest can handle barn chores on their own.

12 There is so much information to share relative to
13 this proposed relief that I believe is important for
14 you, your Honor, to have in order to make an informed
15 decision. You will hear a lot from our esteemed counsel
16 making affirmative statements concerning the merits of
17 said settlement.

18 I have read, and no doubt you have, many of these
19 arguments already. I want to be clear about this:
20 Every time they attempt to assert that this is a fair,
21 reasonable, or adequate settlement, they demonstrate
22 their ignorance of or contempt for this class and the
23 facts of the risk that we live under.

24 In order for a settlement to be fair, reasonable,
25 or adequate, it needs to be looked at in the light of

1 the instant case. Comparisons to irrelevant, unrelated
2 settlements are useless to inform the decision-maker.

3 If I may digress for just a moment, I believe it
4 may be useful for the Court to provide a brief
5 introduction to this class that is now dependent on your
6 decision here as to whether we find any relief.

7 Excuse me.

8 This class feeds everyone in the courtroom. Our
9 routine consists of a minimum of six or seven hours of
10 daily work, what we call chores, mostly feeding and
11 milking cows. That is seven days a week, 365 days a
12 year. I have many neighbors who haven't missed chores
13 in years, some in decades. That is around 40 hours a
14 week of difficult and dirty work, if everything goes
15 well, without equipment failure, flat tire, or animal
16 health issues. This, of course, does not include a
17 single seed planted, crop harvested, bill paid, snow
18 shoveled, or board nailed back up.

19 As a result of this level of commitment, we are a
20 class ripe for abuse. And we have been abused, first by
21 the defendants and now by those who purport to represent
22 us and our interest as counsel. They're not only silent
23 in the face of evil, but they would happily sell us out
24 for the \$16 million.

25 This is not like a Pella window case from the

1 Seventh Circuit decided this past June with respect to
2 getting paid or not for a defective product. No, our
3 livelihoods are daily threatened by these defendants,
4 and our so-called counsel would leave us at their mercy.

5 Forgive me for my long-winded introduction. I
6 would like to get to the substance of the proposed
7 settlement and, along procedural lines, confront some of
8 the issues surrounding negotiation and misleading
9 statements from both renewed motions and declarations of
10 Mr. Abrams and Mr. Brown. It will be necessary for me
11 to briefly revisit the Dean settlement, as counsel has
12 used that as evidence against us.

13 With regards to procedure, I would like the Court
14 to consider our issues in light of 23(g)(4). Concerning
15 the Dean settlement, my wife and I were informed there
16 is no reason to be at the fairness hearing. The
17 courtroom is the domain of the attorneys, is what we
18 were told. As such, we were actively discouraged from
19 attending.

20 You have heard about the push to get the Dean
21 settlement done and the divide-and-conquer tactics used
22 by Cohen Milstein. Apparently the Sitts and Allens were
23 in opposition to the Dean settlement. My wife and I,
24 who were in Washington for my deposition, were unaware
25 of the questions raised by our fellow class

1 representatives.

2 On the evening of December 23rd -- or -- 22nd or
3 23rd of 2010, while in the offices of Cohen Milstein,
4 Mr. Brown came into the room where we were. He quietly
5 consulted with Mr. Pierson, who was with us at that
6 time. Then he and Mr. Brown asked if we would accompany
7 him to his office to speak with Alice Allen, who was on
8 the phone.

9 When my wife and I spoke to Alice, using Ben's
10 arguments -- Mr. Brown -- we were able to sway her.
11 Mr. Brown explained the reasons for taking the Dean
12 settlement as primarily being, number one, it will
13 secure the class going forward. Your Honor would be
14 hard-pressed not to grant us class certification for our
15 case having just approved the class for settlement.
16 This, of course, was proven to be a false statement.

17 His second reason we should approve is because it
18 would give us an impetus going forward after, and I
19 quote, the big fish, DFA, DMS, which is worth five times
20 as much. This, too, has proven false, as evidenced by
21 the proposed settlement on the table.

22 How do I know the monetary amount is inadequate?
23 Well, it is because Mr. Benjamin Brown told me so. He
24 said this settlement is worth \$150 million. And that
25 was on the -- at the onset of discovery, before class

1 certification, Daubert, et cetera. I don't need to go
2 through it. You were here for all of it.

3 In addition, Mr. Bob Abrams said in the Southeast
4 case, docket 1922-1, filed on the 21st of January 2013,
5 on page 13, in discussing monetary award in that case,
6 he cites Relafen, 231 F.R.D. 64, which I have no idea
7 what any of all that means, only to say, I quote, Noting
8 settlements obtaining 26 recovery -- 26 percent recovery
9 are reasonable.

10 Our recovery of \$50 million represents just 14
11 percent of the DFA, DMS reduced damage model after
12 preliminary judgment of \$350 million. I suppose that
13 should mean that this recovery is unreasonable and
14 inadequate, according to Mr. Abrams.

15 It seems, since I am into the settlement already --
16 excuse me -- I will continue for just a moment looking
17 at the monetary aspect of it with regards to the
18 plaintiffs' incentives. None of us got into this
19 lawsuit for money. But for these attorneys to offer us
20 \$20,000 to compensate for our risks against -- again
21 demonstrates their ignorance of or contempt for those
22 risks.

23 I received a call recently from a Mr. Joe Davitt.
24 He told me he would be sending a letter objecting to
25 this settlement. He explained to me he used to be a DFA

1 delegate, but he said issues he raised, he questioned
2 the *status quo*: How can we as delegates only vote on
3 nondairy policy issues?

4 Well, I guess he made too much noise and asked the
5 wrong questions. He told Mr. Brad Keating, "I am just
6 asking the questions I am being asked by my farmers."
7 The field man, his field representative, stopped by the
8 farm one day and told him, "We don't have a market for
9 your milk," and they wouldn't be picking him up anymore.
10 So much for DFA being a farmer-run cooperative. He was
11 a duly-elected representative.

12 Mr. Davitt called Arden Tewksbury. Arden said he
13 could get the other local cooperative to pick him up.
14 That co-op sent out their representative. He said, "It
15 should be no problem to pick up your milk. I will call
16 you tomorrow to make arrangements." Well, he did call.
17 He said, "Sorry, Joe. We can't pick up your milk. DFA
18 has threatened our access to the milk plant if we pick
19 you up." Mr. Davitt was a third-generation farmer. He
20 was forced to sell his cows three years ago. He said,
21 "I doubt if I will ever milk a cow again."

22 With the exception of the Allens who sold their
23 cows several years ago, this is the risk that we, as
24 class representatives, live with every day. This
25 falsely called agricultural co-op maintains all its

1 options with regards to crushing the businesses of
2 anyone who dares to oppose them.

3 Our counsel and this proposed settlement leaves
4 unscathed, in Rick Smith's own words, and they throw
5 \$20,000 our way and have the unmitigated audacity to
6 suggest that this covers the risk we have taken.

7 With regards to settlement negotiations: When you
8 go from hearing no talk of settlement, no talk of
9 settlement, not even close to settling, then settle, it
10 has a way of focusing our attention on areas of primary
11 concern.

12 Furthermore, our opinions have been informed by
13 over four years of experience on this case. Mr. Pierson
14 insisted that injunctive relief would need to keep in
15 mind their business model, them being DFA. We would
16 need to leave that unaffected. Injunctive relief that
17 does not affect their business model is simply to
18 rearrange the chairs on the deck of the Titanic. As
19 long as cooperatives make products and process milk,
20 they have a fundamental conflict of interest.

21 Having said that, we did propose injunctive relief
22 that would not affect their business model, unless:

23 Number one, divesting themselves of all testing
24 laboratory facilities should not affect their business
25 model, unless they have been shaving a little bit of

1 protein or fat off of the farmers' tests or using
2 testing as a club or a way to pilfer premiums.

3 Number two, requiring representation from the board
4 of directors to be present at all negotiations of
5 contracts for the supply of raw milk, that should not
6 affect their business model unless DFA, DMS is doing
7 something they don't want their directors to see.

8 Number three, third-party handling of delegate
9 elections shouldn't affect their business model unless
10 they are concerned about getting the wrong kind of
11 delegates.

12 Why Mr. Pierson, as an attorney allegedly
13 representing the farmers, should be concerned about
14 protecting the business model of DFA and DMS is only one
15 of the many questions we have asked concerning his
16 behavior.

17 One would think our prestigious negotiators could
18 have gotten us something. What we have here is, in
19 absolute terms, zero. Our esteemed counsel, to assert
20 otherwise, is, at best, delusional. While I suspect the
21 language used by Mr. Abrams in his declaration and
22 renewed motion for preliminary approval is sufficiently
23 nuanced, that we couldn't accuse him of dishonesty, it's
24 a semantical stretch to say that some of our proposals
25 were accepted in hope or not at all or in part. I don't

1 believe that any were accepted in whole. As I said,
2 from when we went from no settlement, no settlement, to
3 settle, it sharpens your focus.

4 Garret and I both stated we had nonnegotiables.
5 Mr. Abrams explained there are no nonnegotiables, except
6 the money, the money which, of course, affects counsel.
7 As for our requests, well, we can't have nonnegotiables.
8 Garret talked about the divesting DFA, DMS of their milk
9 testing laboratories. I guess that falls under the
10 category of "not at all." My idea of third-party
11 handling of delegate elections, as we explained in our
12 document filed on the 23rd, was, shall we say,
13 emasculated.

14 With regards to negotiations, you may have gathered
15 things weren't going well in late June between our
16 counsel and ourselves. We realized very quickly that
17 this proposed settlement was inadequate, unreasonable,
18 and unfair. We dug in our heels on behalf of our class.

19 When your Honor denied preliminary approval
20 requesting the reasons for class representatives
21 unanimously opposing this proposed settlement -- excuse
22 me -- Mr. Brown contacted my wife to set up a conference
23 call for us to explain our issues. We had just invested
24 so much of our precious early summertime in settlement
25 talks, which proved completely fruitless.

1 She said, "If the judge wants to know what our
2 objections are, we won't waste your time," referring to
3 counsel. "We will give her," referring to your Honor,
4 "the purest document possible. We will write it
5 ourselves." We thought that would be the easiest way to
6 avoid the wordsmithing and editing that had been our
7 history with Mr. Pierson, who correctly states in his
8 declaration that Mr. Brown was our primary contact as
9 subclass representatives. That was because we wanted to
10 fire Cohen Milstein if they didn't remove Mr. Pierson
11 who had -- up to that time, had been our primary
12 contact.

13 Anyway, Claudia told Ben, "We, the class reps" --
14 Mr. Brown, sorry -- "We, the class reps, will get
15 together and create a document. We will send it to
16 Mr. Manitsky to file on our behalf." Mr. Brown agreed
17 that that would be fine. He assured us it would be
18 filed verbatim.

19 He also impressed upon Claudia that we need to get
20 this done right away. I believe it was Friday he
21 called. On Monday, July 14th, Richard Swantak, Ralph
22 and Garret Sitts, Claudia and I met at the Sitts' --
23 Sitts's farm. Alice was present via speakerphone. We
24 put together the document titled Class Representatives'
25 Opposition to Proposed Settlement.

1 Contrary to Mr. Brown's declaration, Miss Allen had
2 not wavered in her opposition to the settlement until
3 sometime after the 14th of July. Fact is, Alice was an
4 active contributor. She was particularly concerned that
5 we should share with the Court the following from our
6 document, and I quote: Counsel apparently did not
7 inform the defendants either -- and this would be in
8 reference to the class representatives' unanimous
9 opposition. And I go on with the quote: Counsel
10 apparently did not inform the defendants either as DFA
11 remained confident enough about their agreement to
12 publish it as a finished matter to its membership on
13 Thursday, July 3rd, and on Farm Journal's ag website on
14 Tuesday, July 8th.

15 What happened to Alice Allen after July 15th is a
16 subject of speculation. We overnight mailed our
17 document on the 15th. It was received by Mr. Manitsky
18 at Gravel & Shea on the 16th. It was filed with the
19 court on the 23rd *in camera*. This was something we
20 strenuously objected to.

21 Our counsel claimed attorney work product and
22 attorney/client privilege. Our understanding of
23 attorney/client privilege is that it is something the
24 client claims, not the attorney. And in looking back,
25 or -- and there was some question at the time, even, if

1 contrary to our agreement, there was some attorney work
2 product, in the form of tampering with our document.

3 We, of course, despite our best efforts, were not
4 able to view the document that was submitted to the
5 court. We were unable to confirm or dismiss our
6 suspicions. I believe this is our filed copies of that
7 document.

8 Before diving into the nuts and bolts of the
9 proposed settlement, I note in the renewed motion for
10 preliminary approval a couple of items: Number one,
11 counsel speaks of the proposed settlement being
12 beneficial in the light of timing. We have discussed at
13 length how the financial compensation is -- is
14 functionally irrelevant. I will explain how the same is
15 true for the alleged relief, although actually a lot of
16 that's already been covered -- excuse me -- as well.

17 Furthermore, I believe -- what I'd like to get at
18 is furthermore, I believe the threat of this legal
19 action hanging over the heads of DFA, DMS has a
20 beneficial effect on the farm. Immediate closure of the
21 matter, especially in the form of a sellout to the
22 defendants, would remove the protection that the unknown
23 outcome of these proceedings provides to us.

24 Second point: Also from the memorandum of law in
25 support of the renewed motion for preliminary approval,

1 it cites Maywalt versus Parker & Parsley Petroleum
2 Company. In a pinnacle of arrogance, our esteemed
3 counsel quotes, "When a conflict arises between the
4 named plaintiffs and the rest of the class, the class
5 attorney must not allow decisions on behalf of the class
6 to rest exclusively with the named plaintiffs."

7 In the same motion they cite numerous cases and go
8 to great lengths to explain that they, as counsel, had a
9 right to negotiate for the class, a right we never
10 questioned. Furthermore, there is no conflict between
11 the class and the class representatives.

12 All their arguments on these issues is the classic
13 case of complicating the obvious and trivializing the
14 momentous, the obvious being the conflict here is
15 between plaintiff counsel and the court they -- and the
16 class they purport to represent; the momentous being the
17 failure of said counsel to come up with anything
18 remotely resembling a fair, reasonable, or equitable
19 settlement.

20 Enough of the pleasantries. Let's look at what the
21 settlement says, not what the lawyers say it says. I
22 will try to summarize this fairly quickly, focusing on
23 the most salient points, and I will attempt to edit as
24 we go. I hope that doesn't cause much hesitation.

25 The copy I am working with was apparently filed on

1 October 3rd, and the signature page is signed by
2 Mr. Pierson and Mr. Kuney on July 1st.

3 The first thing that I noticed was that on page
4 one, rather than defining the expansion of the complaint
5 in the definition section, it's tucked away right here.
6 We will revisit it when we get to the relief, but
7 they -- the definition of the complaint is not the
8 complaint, it's not the complaint and the amended
9 complaint, but it is the complaint and any other
10 pleading filed in this matter or any consolidated
11 matter.

12 And in the process of these declarations and
13 proceedings, I believe we have basically touched on
14 every -- every issue that is relevant to the dairy
15 industry. So we are talking about all dairy industry
16 issues when we say "the complaint."

17 Section 1.5. In this definition, section 1.5, it
18 refers here to the farmers who have not exercised a
19 right to be excluded by April 30th, 2013. I will -- I
20 will revisit that.

21 Let me see if I will read -- some of these were
22 read, so I will try and spare -- but if I take as much
23 time to --

24 THE COURT: Take as much time as you want. We
25 have all day, and this is your opportunity. So don't

1 worry about time.

2 JONATHAN HAAR: Okay. Well, thank you. Thank
3 you. I don't want to be overly redundant, is all.

4 Remember when reading the released claims we need
5 to keep in mind the expanded definition of the
6 complaint. I basically went over that.

7 I notice it wasn't in the definition section. I
8 thought that was a little unfair. Released claims is
9 everything. Release -- released parties is everybody,
10 their affiliates and their affiliates' affiliates.
11 Suffice to say -- we have been through these
12 definitions, so I guess I am comfortable with that.

13 Suffice to say, by the end of Section 1 we have set
14 up a scenario where everyone -- where anyone who has any
15 interest of any kind in the class members' farms --
16 including, obviously, the class members themselves -- is
17 absolving anyone who is in any way affiliated with the
18 defendants or affiliated, as I said, with the
19 defendants' affiliates. Remembering the expanded
20 definition of the complaint, the issues at hand are
21 essentially any question that would have ever arisen in
22 the dairy industry.

23 So the defendants have requested eternal
24 absolution -- that's in Section 6.1 -- and -- all right.
25 I will move on there.

1 Section 3, notice to subclass. I think Mrs. Haar
2 has that.

3 Section 4, I basically define the plaintiffs'
4 subclasses.

5 Section 4.2 just speaks about the fairness hearing.
6 Thank you.

7 The relative date of the agreement is ASAP. I
8 apparently have some confusion here, and maybe you can
9 clear for me, are we talking about 30 months from the
10 date of this -- of, God forbid, the settlement, or are
11 we talking about the December 31st of 2016?

12 THE COURT: The effective date?

13 JONATHAN HAAR: No, the end of the settlement
14 period.

15 THE COURT: I am going to allow the attorneys
16 to give their definition of it, because it's their
17 agreement, and I will note that is an issue that you
18 have and that needs to be decided as part of this
19 proceeding.

20 JONATHAN HAAR: I was just a little confused
21 because this one, I believe, says the 31st of December,
22 2016. But I have also heard said 30 months. Whatever.
23 It's -- it's not of great consequence.

24 Release and covenant to sue (sic) is Section 6:
25 Upon the effective date, each of the releasing parties

1 shall have deemed -- shall deem to have and, by
2 operation of judgment, shall have fully, finally, and
3 forever released, relinquished, and discharged all
4 released claims -- Ralph actually read all of this, so I
5 will save it.

6 Section 6.1: We, the class, are asked to forever
7 release -- we don't know exactly who, and we don't know
8 exactly from what. I don't think this is reasonable.

9 Section 6.2 just drives the whole point home that
10 we -- we give it all up without even knowing exactly
11 what the "up" is. With regards to the last sentence of
12 Section 6.2, Plaintiff subclasses acknowledge, and the
13 releasing parties deemed to have acknowledged, and by
14 operation of the judgment shall have acknowledged, that
15 the foregoing waiver was completely, separately --
16 was -- the foregoing waiver -- I'm sorry -- was
17 separately bargained for and a key element of the
18 settlement of which this release is a part.

19 Your Honor, with regards to what we mean as a
20 class, as this waiver is a key element of this
21 settlement, we are seeking denial of said settlement
22 with prejudice.

23 With regards to everyone but the attorneys, the
24 lawyers -- the money, rather, isn't really much worth
25 speaking about, and the reason being, it represents

1 approximately 1 percent of the average Order Farmer 1's
2 milk receipts. I get this generous estimate by taking
3 the market administrator's daily average for the two
4 months -- I have -- I have two letters with me, and they
5 are from -- I think it's September, October, but they
6 are fall months, which milk production is typically
7 lower in the Northeast in the fall than in the summer,
8 but I will use that number.

9 I round that number down -- the market
10 administrator. I round the number down to 5600 pounds
11 per day. I divide that by a hundredweight to get a
12 hundred -- to get my hundredweights. I divide it by a
13 hundred to get hundredweights, which is how we are paid.
14 I multiply that by \$18. Now, we have been averaging
15 well over \$20 for the last two-plus years. And I will
16 divide what the lawyers' very generous \$4,000-per-farm
17 estimate. And that gets me down to 1 percent of annual
18 gross milk receipts. So we're talking about a one-time
19 payment equaling 1 percent of their milk receipts.

20 Now, this average farm, milk production averages a
21 little over 50 pounds per cow. So if we take that
22 number, and we say 5600 pounds per day, we are looking
23 at basically a hundred-cow dairy. That hundred-cow
24 dairy, in addition to milk receipts, has 50 bull cows
25 every year approximately, because your dairy herd is --

1 you are hoping to get your dairy to freshen on an annual
2 basis. So there's some -- you know, obviously it's a
3 natural process, so there's some -- doesn't work like it
4 should in the textbook.

5 But, anyway, you have basically about a hundred
6 calves a year on a hundred-cow dairy. And of those,
7 approximately half are usually bulls. Sometimes that's
8 up or down. But those are currently selling for over
9 \$300 a head. If you took \$200 a head, you are looking
10 at, what, another -- I wrote -- I did the math --
11 another \$10,000 to the bottom line.

12 Cows are also bringing in excess of a hundred
13 dollars -- a hundred pound -- I'm sorry. Cows are also
14 bringing in excess of a thousand dollars a head. So
15 let's say our dairy has a conservative cull rate of 25
16 percent, and let's say they only bring \$800 a head. My
17 last Holstein cull that I sent less than two weeks ago
18 brought \$1200 a head, or she brought \$1200. So that
19 conservative estimate yields another \$20,000.

20 This .1 percent does not take into account this
21 other \$30,000, or the fact that if your cull rate's only
22 25 percent, you also have 25 heifer calves that you can
23 get rid of every year because you are replacing those 25
24 cows that you are pulling out. It's a two-year time
25 span, but that's the way the math works.

1 So that's what we are looking at. We are looking
2 at a one-time payment of 1 percent of your gross milk
3 receipts.

4 All right. Now we are going to get into Section F,
5 which -- oh, no. Monetary relief -- conduct elements,
6 I'm sorry. Section -- it's Section 7.3, is the conduct
7 elements.

8 Now, over these conduct elements -- no, I will keep
9 going. I'm sorry. Conduct elements. Monetary
10 relief -- I just went through the monetary relief.

11 Settling defendants, in terms of this agreement,
12 will not enter into any FSAs, new FSAs. The younger
13 Mr. Haar established that it's not new FSAs that created
14 the problem. So there's zero relief there.

15 Settling defendants agree, during the term of this
16 agreement, no new agreements for the supply of raw Grade
17 A milk or any renewal of existing agreements, not -- not
18 that there's none of them, but they shall be presented,
19 reviewed, and approved by the DFA board of directors
20 prior to DFA entering into, renewing such agreement,
21 presenting, reviewed, and approved by the DMS
22 board -- it's the same thing but DFA and DMS. So it
23 repeats the comment that they will not enter into any of
24 those agreements.

25 This goes back to the negotiations. I asked that

1 board members needed to participate in negotiations of
2 agreements. In my third declaration, which was filed on
3 August 9th of 2013, I state in the DFA newsletters --
4 newsletter, member update that I received, I am
5 repeatedly told by the board of directors -- or told
6 that the board of directors has received, they have
7 reviewed, they have approved.

8 Never in my now-14-year tenure with DFA do I
9 remember the board initiating, recommending, requesting,
10 suggesting, or refusing any actions itself. The board
11 of directors has not and will not direct the management.

12 Settling defendants -- Section (c). Settling
13 defendants agree that they will, upon written request of
14 any of their respected members who are located in
15 Order 1, disclose a summary of the terms of agreements.
16 This disclosure shall state whether the agreement is a
17 full-supply agreement, the duration of the agreement, or
18 any other material provision, provided its disclosure is
19 permitted by the terms of said agreement.

20 Section (c) sounds like maybe we are going to get
21 something here. But a little closer look reveals,
22 number one, the overcommitted farmer needs to write in,
23 and the boss knows you are writing to ask about the
24 boss. Number two, he or she will get a summary, which,
25 of course, to summarize we need to edit.

1 Number three, said farmer can only do this for the
2 next 23 months if it's -- and I will just state this in
3 terms of the 31st of 2016 -- December 31st, 2016. So I
4 will just use the -- that's what I was working with. If
5 it's 30 months, then we need to adjust that, but -- for
6 the next 23 months, during which time whatever
7 information the farmer gets -- and Alice spoke to the
8 opportunity to get information -- we can't act upon.
9 It's unactionable. We gave that away.

10 Fourth and finally, the last sentence provides the
11 combine-size loophole: Provided its disclosure is
12 permitted in said agreement. Section (c), no
13 transparency, no relief.

14 Section (d). Settling defendants agree any
15 cooperative member, affiliate, associate in Order 1 may,
16 during the term of this agreement, terminate its
17 relationship upon no more than 90 days without written
18 notice.

19 I will use my 23 months, minus the three months,
20 the 90 days, if the market share and -- the market share
21 and FSS are not addressed, you have 20 months to find a
22 new career. We haven't affected any of the key players
23 in any way, Rick Smith at his own word.

24 (e). Settling defendants agree not to oppose a
25 request by subclass counsel to unseal and release

1 materials submitted to the court. In connection with
2 the plaintiffs' motion for certification of
3 subclasses -- that's court docket number 388 -- and
4 defendants' motions for summary judgment, court docket
5 number 479 -- to the extent that the disclosure of such
6 documents is not prohibited by settling defendants'
7 obligations to third parties.

8 A couple things jump out with regards to (e). Why
9 just stuff in connection with the two dockets? How
10 about the whole record? This looks patently unfair
11 compared to the exhaustive release. The last sentence
12 effectively negates our efforts at disclosure anyway,
13 that being obligations to third parties. It is very
14 easy to look for obligations to third parties.

15 Section (f). Okay. All of these next sections
16 need to be considered under the umbrella of fact that
17 most of these conduct -- that cover most of these
18 conduct elements, that being, number one, we are asking
19 them -- DFA, DMS -- to review and act -- I think Joshua
20 used this already -- that DFA, DMS to review and act on
21 policies they have already renewed and acted upon and
22 that they have already implemented these policies, and
23 the Northeast Dairy Council is under no obligation,
24 based on this settlement, to change anything.

25 So they are going to look at members' milk checks,

1 and if they feel in the mood -- Joshua had read the
2 Ernst & Young disclaimer. I just wanted to mention to
3 the Court that that was from our DFA -- I think it's a
4 financial -- year-end financial statement they had
5 printed that disclosure in there.

6 It will disclose -- actually, Joshua covered this.
7 Disclosing the members, the identity of members of the
8 board of directors. I guess -- I guess this will --
9 this would be a change if they -- if they talked about
10 their committees and checked their per diem rate.

11 Thanks.

12 DFA will post on its secure member website -- this
13 is Section (ii). This is all under -- I think it's
14 conduct elements.

15 (ii). DFA will post on its secure, members-only
16 website, myDFA, an annual disclosure of all material
17 related-party transactions, other than the sales or
18 purchases of raw milk to or from affiliates,
19 specifically broken out and identified per transaction,
20 not aggregated, with the definition of "material,"
21 "materiality" as involving an amount of \$120,000 or
22 more.

23 (iii) also -- or Section (ii) here also equals no
24 transparency; three \$100,000 transactions equals a
25 \$300,000 transaction, but they're all still under

1 120,000. They are not going to aggregate. There's no
2 transparency here. And if you did find something out,
3 you still can't act on it.

4 DFA board members and senior executive management
5 will continue to execute annual conflict of interest --
6 why is this in here? This is something they do already.
7 How can we be selling our rights and our opportunity to
8 carry this to something reasonable, fair, whether it's
9 settlement or trial? They just put in here things that
10 they already do and expect us to thank them for it.

11 In addition, it's all subject to their whim.

12 Okay. Section (iv), (g): DFA will disclose to
13 delegates at DFA's annual meeting financial information
14 which shall include materially party -- shall include
15 material related-party transactions as defined in 7(ii).

16 So that's the first loophole, that you can easily
17 negotiate your contracts to be below the material
18 number.

19 They are not going to aggregate. That's the same.

20 With the definition of "material" -- oh, this is a
21 little different -- includes -- the definition including
22 a transaction of more than \$5 million, excluding the
23 sales or purchases of raw milk from affiliates.

24 We're in the milk business. This is what DFA and
25 DMS are doing. This is the source of the -- this is the

1 source of the damages. How -- we are not talking about
2 the milk business, why talk? There's nothing there.

3 Number (v). DFA auditors shall be selected from
4 one of the nationally recognized accounting --
5 accounting firms. They already do that. So again, it's
6 here, and they already do that.

7 DFA and senior management and audit committee of
8 DFA board will affirmatively represent that they are
9 responsible for the preparation, integrity, and accuracy
10 of DFA's annual financial report.

11 Again, we give away the right to do anything about
12 their behavior.

13 All right. This is Section (j). In my particular
14 copy, which I say apparently was filed, this (j) is
15 special because it comes before (h). But -- DFA's
16 Northeast Area Council will undertake a careful review
17 as to whether changes are warranted in the election of
18 area council members and delegates -- I will share
19 something with regard to this a little further down --
20 if the Northeast Area Council so recommends such changes
21 will be implemented.

22 (h). Compliance with the terms of the settlement
23 agreement will be monitored by the audit committee.
24 There will be two independent advisors.

25 Now, advisors don't know -- don't vote, and they

1 have no power. And, in addition, I actually thought
2 this might have something to do with my -- with my
3 request for the board members to be present at
4 negotiations for contracts for the purchase and sale of
5 raw milk, but then I saw it was cut and pasted from the
6 Southeast.

7 On the advisors will have expertise -- oh, and they
8 are currently free from any other relationship with DFA.
9 Is that for the term of the settlement? Are these
10 future players? Are they former players? And they are
11 going to report their views to the delegates at the DFA
12 annual meeting. I was -- well, I already shared about
13 Mr. Davitt complaining about the annual meeting
14 delegates don't vote on milk policy issues.

15 Okay, (i) was the -- we discussed already about
16 the -- I guess Ralph read the -- the antidiscrimination
17 clause, that they are not going to discriminate against
18 us for standing here and telling our story. Is this for
19 the term of the agreement, or is this forever, as the
20 release is, forever and ever, amen? And how does it
21 work?

22 They take -- they take my milk. They tested my
23 milk. I say it was good; they say it was bad. How do
24 I -- it's my word against theirs. The milk's gone.
25 What's my recourse? There's no -- there's nothing here

1 to protect me or defend me in any way from what -- I
2 mean, I am not a lawyer, but it seems to me that
3 there's -- there's nothing binding in any of this.
4 There's no punitive terms or anything.

5 (j). This is the real (j): Settling defendants
6 shall not enter or maintain any agreement or
7 understanding, written or unwritten, with any
8 cooperative that limits or restricts any form of
9 solicitation of milk supplies from dairy farmers,
10 including, but not limited to, any agreement that
11 restricts contacting or approaching dairy farmers to
12 offer more favorable financial terms, services, or other
13 terms or conditions.

14 Again, there's absolutely nothing binding here.
15 They have been doing this. They knew they shouldn't be
16 doing it, as evidenced by the -- the Rick Smith comment
17 that has been shared with this Court before. And is
18 this for the -- I assume this is only for the term of
19 the agreement. This is not binding forever, like our
20 release is binding forever.

21 Settling defendants will have and maintain an
22 ongoing antitrust compliance program.

23 They violated this. This was a subject that --
24 although unactionable by this Court, Mr. Pierson went to
25 great lengths to explain to the Court the defendants'

1 violation of the consent decree in DFA antitrust
2 compliance guidelines and their core policies. This
3 equals no change. They do it already.

4 And so we are on to the settlement fund. I think
5 we have -- I think I have got that.

6 Okay. Opt-outs. I will -- I will look at
7 opt-outs.

8 I have spoken to several farmers who are engaged in
9 legal proceedings or contemplating legal proceedings.
10 The original opt-out paperwork, I suppose, was sent
11 sometime prior to April 30th, 2013. That's almost two
12 years ago. When our distinguished counsel discussed
13 damages, they don't consider the damages these other
14 actions by class members may be seeking.

15 Some may have been started after the opt-out notice
16 was sent. That was the case for Mr. Vaughn Sherman. He
17 is out of -- out of Ithaca, New York. He is the largest
18 organic producer east of the Mississippi, I am told.
19 Two years ago when he had the option to opt out, the
20 notice would have been an irrelevant piece of mail sent
21 to a member of this class who probably works 80 hours a
22 week. Is this fair? To steal away we don't know how --
23 how many legal actions from this class?

24 Remember, the expanded definition of the -- of the
25 complaint now covers every possible issue, essentially

1 every possible issue. This is a sweetheart deal for the
2 defendants. But it is patently unfair to these absent
3 class members, in particular.

4 Final point with regards to the settlement: The
5 areas that are left to DFA's discretion need to be
6 considered in the light of who we are dealing with.
7 First, according to the Southeast area farmers I spoke
8 with, the recent settlement did not really solve any
9 problems and did not improve transparency.

10 One gentleman I spoke with was explaining -- he had
11 not actually been able to keep up with checking the
12 percentage of Order 1 milk, but he didn't think that
13 they made a fundamental change in that. I don't know if
14 you are familiar with how in the Southeast they actually
15 took some money, and I believe it was \$9 million, for a
16 couple of years and held it in escrow upon the fact that
17 if DFA did not follow through on their commitment to
18 redirect milk, to change the blending price -- because
19 the Southeast is traditionally a milk-deficient area,
20 and so typically the higher-value milk, the Order 1
21 milk, would be consumed locally.

22 But apparently -- and I really don't know a lot of
23 the ins and outs, but apparently the milk had been being
24 rediverted to change the Southeast-area blend price.
25 Well, this farmer's impression was -- and by the way,

1 most of these people asked me not to use their names.
2 Where I could, I did, but for the reasons that I trust
3 you are gathering, a lot of people are concerned.

4 He said that DFA is just going to take the
5 \$9 million and distribute it to the class -- it's not
6 their money -- and then they can do what they have been
7 doing and it will just be easier for them to just make
8 their cost-of-doing-business payment.

9 I am not sure if this was the same gentleman or
10 another one, talked about recent upset victory,
11 Southeast Area Council. DFA approached the farmer who
12 had won and explained that if he bumped the man who he
13 had beaten, that his area would lose its representation
14 on the corporate board. Apparently the gentleman who
15 was the Southeast Area Council board member was also on
16 the corporate board. And I am not that familiar with
17 the bylaws, but I am assuming, based on the comment,
18 that if you are not on a council, you can't be on the
19 board.

20 And so he was -- whatever -- whatever the case,
21 however that was explained, the bottom line was the
22 winner was convinced not to take his place on the
23 council. DFA then removed one council seat in the area
24 to consolidate the power of this one person and then
25 voted to extend their terms from two years to three

1 years. So much for grass roots representation.

2 This organization is not member-run. And this
3 proposed settlement is inadequate to cause any change in
4 that. DFA cheats. I just explained that.

5 Another example: Rick Smith was -- an agreement
6 was reached with Rick Smith, the -- Rick Smith -- I
7 assume you are familiar with Rick Smith -- with
8 scheduled meetings across the -- I don't know his title
9 at the moment -- across the Southeast.

10 Apparently Mr. Higgins and Mr. Foy were supposed to
11 be at the one that was scheduled for July 11th, 2013, at
12 the Best Western Hotel on Morland Drive in Statesville,
13 North Carolina. They didn't make it, which is just as
14 well because the hotel was closed for renovations.

15 But if you went past the "closed" sign, you'd find
16 there was a meeting going on, two guest rooms with a
17 partition removed, to quote the farmer I spoke with,
18 without air conditioning, July in North Carolina.

19 A man was setting up video equipment. Rick Smith
20 showed up late and complained about being videotaped.
21 He said, "Not that I really care, it's just unusual."
22 He gave his, to quote the farmer again, canned speech,
23 and left. The farmer I spoke with then went and asked
24 the cameraman, who was packing up, "Who paid you? Why
25 are you here?" He said, "Oh" -- the cameraman said,

1 "The guy who spoke hired me. It was a last-minute
2 thing. His secretary called last night."

3 Another Southeast area farmer I spoke with was a
4 DFA delegate, explained -- he learned about the rule --
5 that was the one that, again, the younger Mr. Haar
6 shared about the -- they apparently had a rule change
7 where you can't just go to your council meeting, as an
8 owner. You need to make an appointment, you can state
9 your case, and then, to quote this guy, you can leave.
10 You can vent and leave. That's what he said. And they
11 will close the door behind you and have their meeting,
12 close quotes. The farmer told me, this is Rick Smith's
13 idea of transparency. DFA lies.

14 A little closer to home, I have a letter dated --
15 and unfortunately I missed the tutorial about the -- how
16 to use the -- earlier, but I have a letter dated May
17 4th, 2012. Originally I was just going to hit some high
18 marks, but I would like to read the whole thing, and
19 it's fairly short:

20 "Dear Producer:

21 "The United States has been showing significant
22 increases in milk production, particularly since
23 January. The average production year to date has
24 grown" -- "has been in excess of 4 percent, which has
25 not occurred in many years. U.S. can normally grow at a

1 rate of 1 and a half to 2 percent and see that rate of
2 increase absorbed through normal sales growth. Growth
3 beyond these rates, which we are now experiencing, put
4 downward pressure on" -- "on our price.

5 "Unless there is extraordinary growth and demand,
6 the difference between 1 and a half and 2 percent and 4
7 percent, and the early" -- "and the early flush due to
8 the mild winter, have placed a significant burden on
9 milk for balancing."

10 The "flush" refers to the cows being turned out on
11 grass in the spring and actually even longer days
12 contribute to more milk. Maybe they don't like this
13 weather. I don't know.

14 "The stress on balancing is not unique to our area
15 but similar to other parts of the United States. For
16 example, in California, some farms have produced milk
17 made over a certain base level are going to be charged
18 10 cents per hundredweight for balancing cost.
19 Other groups in the mideast, in Ohio, Michigan area, had
20 to dump milk because it had no place to go. In
21 Michigan, Indiana area, farms paid 80 cents plus in
22 March for balancing and will probably do so again in
23 April.

24 "Three or four other cooperatives west of the
25 Mississippi have implemented base excess plans. We

1 believe those plans are inappropriate for our geography
2 based on the fact that there's significant process plant
3 expansion underway. We will need all the extra milk we
4 have plus some within 12 to 36 months."

5 We just said the area is different, and this is a
6 high-level, high-paid DFA -- or this is DMS -- I'm
7 sorry -- DMS officer.

8 And the next sentence starts, "Here in the
9 Northeast, it's no different." I thought he just said
10 it was different, but anyway. "Our plants are brimming
11 full of milk, which is higher than normal for this time
12 of year. Normally extra milk will be balanced in
13 the range of 2.50 per hundredweight below our regular
14 pricing. This year, that cost is approximating \$6 per
15 hundredweight below our regular pricing. These costs
16 are clearly way above the normal costs we handle
17 throughout the year.

18 "In light of where we are, we will be making
19 premium adjustments to address the costs associated with
20 balancing. We will continue to seek all avenues to
21 reduce our balancing costs and keep marketing costs
22 down.

23 "Sincerely, Sharad Mathur." He is the chief
24 operating officer of Dairy Marketing Services, LLC, and
25 that's May 4th, 2012.

1 This all sounds reasonable, and if you were an
2 Order 1 farmer from anywhere but central New York, you
3 might believe it. But I live five miles up New York
4 State route from the Chobani plant. I would actually
5 like to digress on that a little because, having reread
6 this -- and just last night I thought, it sounds a lot
7 to me like fear-driven extortion.

8 They're dumping milk in the Midwest, pouring your
9 product down the drain. What if we can't find a home
10 for your milk? Don't worry. You just give us your 10
11 cents and be quiet -- it actually was 30 cents per
12 hundredweight. They ended up charging us for about five
13 months -- it was for several months, at least, that
14 spring.

15 So, he's talking about how there's so much milk. I
16 live five miles up New York's State Route 8 from the
17 Chobani plant, Chobani yogurt thing, in South Edmeston.
18 I know many people who work there. At the time of this
19 letter, the Chobani plant was experiencing explosive
20 growth. We work on both sides of Route 8. We saw the
21 trucks coming and going incessantly. Hamdi Ulukaya, the
22 founder of Chobani yogurt, was looking for 90 to a
23 hundred loads of milk per day. DMS could not or would
24 not come up with enough milk for him.

25 Not finding enough milk in our area was one of his

1 primary reasons for moving much of his operation to
2 Idaho. So I'm talking to my neighbors who work for
3 Hamdi Ulukaya, and they are saying, "Ah, we can't get
4 enough milk," and I am getting a letter from the chief
5 operating officer of LL -- of DMS telling me, "We gotta
6 charge you 30 cents to balance this month." DFA lies.

7 A little more recently, little more recently:

8 I have here a letter from Mr. Brad Keating dated
9 October 25th, 2014, in which he states -- and I won't
10 read this whole one -- "Back in July we communicated to
11 you about the conditions and circumstances we're facing
12 in the marketing area: the need to implement and make
13 the market adjustment on the check to help defray and
14 recover the costs of milk and the need to implement the
15 market adjustment on the check to help defray and
16 recover the costs of milk balancing."

17 It says, dealing with the same issues, "We are now
18 experiencing increased milk production in the region."
19 October 25th, 2014.

20 I have the milk marketing administrator's letter
21 here dated September 2014. We received this after the
22 month. It's reporting on the facts of September. Milk
23 market administrator shows here pooled milk receipts
24 total 2.072 billion pounds, a decrease of 2.1 percent
25 from last month on an average daily basis.

1 Somebody is either wrong or lying. Well, maybe
2 not. Let's just say he is quicker than the market
3 administrator and give -- give him the benefit of the
4 doubt. Maybe he is informed by more recent data. Well,
5 the October newsletter, which came out in November,
6 states pooled milk receipts did increase .1 percent from
7 last month.

8 So after two months in which the -- in the middle
9 of which Mr. Keating said milk production is rising, we
10 are still at a net loss from August of 2 percent. We
11 have been told all summer long that there's too much
12 milk; they are dumping milk. There's too much milk;
13 they are dumping milk. And we have also been paid
14 record high prices.

15 I am saying to everybody -- excuse me -- who tells
16 me there's too much milk and they're dumping it, if
17 there's too much milk and they are dumping it, how come
18 we are not getting \$16 or \$14 a hundredweight? You are
19 getting record high prices, and we are being told that
20 there's too much milk. Got that skeptical stripe --
21 strip, I guess. I say, "Show me." You know, "Show me."

22 I have a neighbor of mine whose cousin is a milk
23 truck driver, telling me, "Oh, Christmas they had to
24 dump the milk." I said, "Your cousin, he drives a
25 truck, did he open the valve?"

1 "Well, no, they put it in the silo at the milk
2 plant."

3 And of course they stripped the value. They -- I
4 don't know. Perhaps they are dumping water after they
5 get out all the protein and fat. But they're not
6 dumping milk, and it's illusionary to -- it's deceptive
7 to tell us, and they are our fiduciaries, and they are
8 telling us that they are dumping milk. And in the
9 meantime, they have been hitting us up for 50 cents a
10 hundredweight. Contrary to Mr. Keating's assertion, he
11 has been charging 50 cents a hundred pounds of milk
12 since October. It was 15 cents a hundredweight since
13 July.

14 Assuming -- you can do a little math again.
15 Assuming 60 percent market share -- which is
16 conservative; in my neighborhood, it's, I'm sure, over
17 90, at least closer to 90 -- of approximately 2 billion
18 pounds in the order, one point -- that would be 1.2
19 billion pounds, forgetting the 15 cents from July
20 through -- through, I think it was October they
21 started -- this is ongoing right now.

22 So forgetting that, let's just look at the 50-cent
23 market adjustments, four months. We have 1.2 billion
24 pounds divided by the hundredweight. It's 12 million
25 hundredweights times -- is \$6 million a month times four

1 months so far. That's \$24 million this fall, in this
2 order, because Mr. Keating says milk production is going
3 up.

4 All to say, these people who are claiming to
5 represent us as our co-op leaders and are assuring us
6 they will review and consider making changes? Well,
7 they won't. They will use every loophole, and there are
8 many in this inadequate, unfair, and unreasonable
9 proposed settlement. The fact is, the arbitrary nature
10 of much of the relief combined with the vast loopholes
11 and brief period of opportunity to take action, coupled
12 with the expansive relief which moves our -- which
13 removes all our risk going forward -- oh, I'm sorry.
14 Let me start that over.

15 The fact is in the -- the arbitrary nature of much
16 of the relief, combined with the vast loopholes and
17 brief period of opportunity to take action, coupled with
18 the expansive release, removes all of our risk going
19 forward. This proposed settlement gives away so much
20 and guts so little that we would be better off as a
21 class going to trial and losing, for at least the
22 defendants would not be able to get the release. We
23 would lose 1 percent of one year's gross milk receipts,
24 but they would not get their release.

25 Contradict the proposed failure of relief with the

1 following: Recognizing DFA is a farmer-financed
2 international milk-processing corporation. Gone is
3 Capper-Volstead protection. Gone is DMS. Gone is
4 GNEMMA. But these become recognized as tools of the milk
5 mafia, which is, in fact, what they are. That would
6 equal release.

7 My final subject: There has been filed with this
8 court a letter opposing settlement. I have the
9 unparalleled honor of speaking with the author, Maryanne
10 Miller. She said she'd like this case to go to trial.

11 She also questioned the class definition of
12 Order 1. She's always pooled in Order 1. The market
13 administrator considers her an Order 1 producer.
14 Apparently, and I will put this in quotes, Professor
15 Rausser says it's possible that the unregulated areas
16 adjoining Order 1 are part of the relevant market, and
17 that's part of your opening comments from -- from the
18 class certification hearing on September 26th.

19 I had asked for and never received an answer from
20 my counsel, satisfactory or otherwise, as to why, after
21 the initial Dean settlement talks and after mediation,
22 the definition of the class was changed, excluding named
23 plaintiffs, Donna Hall and Vince Neville. And I don't
24 know how many other farmers.

25 With regards to the primary reason, however, that I

1 speak of Maryanne Miller, her location is irrelevant. I
2 speak of her because the actions and attitudes she
3 demonstrates are typical to this class.

4 What she did not mention in her letter is that she
5 and her sisters are the only ones working their
6 third-generation farm. Maryanne is 65. Her sister is
7 69. Her sister should have had her knees replaced back
8 in 1999, but she won't do it, Maryanne says. She has to
9 stand bending over in order to milk the cows.

10 The neighbors tell them they should switch to beef,
11 but she says, "We've always milked cows." My
12 grandfather milked cows here until he died in his 90s.
13 Her father did the same. He has been dead 11 years.
14 She says, "When my sister and I come in for supper,
15 about 10 o'clock," after she sets a while, takes a while
16 for her to get up. But she says she just has to keep
17 moving, keep fighting.

18 Maryanne writes, "I strongly object to this
19 settlement, and I only wish I could attend this hearing.
20 Due to a full farm schedule which I have endured for the
21 past 45 years, it is not possible for me to attend."
22 When I consider these good women, in that old barn,
23 amongst their cows, bringing forth food to feed this
24 nation, and I think of the great honor I have to
25 represent them here, and I think of how these poor,

1 pathetic lawyers would sell their opportunity to
2 represent these good women and, worse, they would sell
3 these women out for a measly \$800 an hour, your Honor,
4 we are fighting for more than \$800 an hour here. We are
5 fighting for the truth.

6 And at the end of the day, the truth matters. The
7 truth is, this is a betrayal. This is not a settlement.
8 My only question for my counsel is what more could you
9 have given away.

10 Your Honor, please do not join DFA and the
11 plaintiff counsel in our betrayal. Thank you.

12 THE COURT: Thank you.

13 We are going to take our lunch break at this time,
14 and we will come back at one, hear from anybody else who
15 wants to speak. As I noted, I have some questions for
16 the attorneys, and we will hear from them.

17 Anything to bring to my attention before we take
18 our lunch break?

19 MR. PIERSON: No, your Honor.

20 THE COURT: All right. Thank you.

21 (Court was in recess at 12:07 p.m.)

22 (The following was held in open court at 1:05 p.m.)

23 THE COURT: We are back on the record in Alice
24 Allen, et al., versus Dairy Farmers of America, et al.,
25 and we are in our fairness hearing.

1 Did anybody else want to speak?

2 CLAUDIA HAAR: My name is Claudia Haar.
3 That's H-a-a-r. And I am also a class representative.
4 Thank you for your patience.

5 As I speak, I am going to be referring to Mr. Haar
6 as "Jonathan," just so that there's clarity between him
7 and my son Joshua, rather than saying Mr. Haar, Sr., and
8 Mr. Haar, Jr.

9 Also, I want to offer to the Court my deepest
10 apologies because I did not type Mr. Haar's speech. So
11 it might be a little challenging for the reporter to be
12 able to decipher it. After 30 years, I still have a
13 hard time, so I had to get --

14 THE COURT: Well, I had an easy time hearing
15 him, so don't worry about it.

16 CLAUDIA HAAR: Okay. Good. Well, because his
17 writing is the part that -- that I'm sorry to say I
18 didn't take care of.

19 It is a privilege to speak directly to the Court
20 today for several reasons. First, it is a great
21 privilege to be the voice for fellow farmers who are
22 afraid to openly oppose this so-called settlement.

23 Second, as a class representative for the last four
24 and a half years, there have been times during these
25 proceedings when I have been exceedingly frustrated with

1 our lack of representation, and I believe a farmer's
2 perspective would have given clarity to our case and
3 answers your Honor's questions.

4 Third, my husband and I, as dairy farmers, have
5 personally experienced some of the illegal behaviors of
6 DFA, DMS.

7 Lastly, I have the perspective, as do the other
8 class representatives, of one having seen the unredacted
9 complaint and all of the allegations in its entirety.

10 Your Honor, I now direct your attention to
11 Exhibit A, which everyone has. Please allow me to read
12 some portions of this e-mail Ralph and Garret Sitts,
13 Richard Swantak, and Jonathan and I sent to our
14 attorneys after this Court denied the initial
15 preliminary approval of this proposed settlement.

16 "In the unfortunate circumstance that your renewed
17 motion would succeed in bringing about a fairness
18 hearing, this would result in class counsel and
19 defendants arguing together against class
20 representatives in favor of a settlement which provides
21 absolution for defendants, millions for class counsel,
22 and pennies for the farmers you signed on to represent.
23 This would demonstrate to the Court the collusive nature
24 of this settlement. Let's avoid that situation."

25 We then offer a suggestion, and closed with "Your

1 friends and fellow litigants."

2 Our suggestion was ignored. When betrayal set in
3 and it was clear that the last thread of trust we placed
4 in counsel was met with disdain, we, as class
5 fiduciaries, knew we all had to speak on behalf of the
6 12,000 farming families we agreed to represent. I know
7 we have heard that there are only 9,000 dairy farms in
8 Order 1, however the market administrator reports over
9 12,000.

10 Just because our dairy farmers in the Amish
11 community did not file claims in the Dean settlement
12 does not mean that they should not be counted. They
13 suffer from the oppressive monopsony, as do we all. I
14 am friends with many in our local Amish group. They are
15 always interested in the status of this case and ask
16 about these proceedings. They greatly appreciate your
17 diligence as guardian of this class.

18 Your Honor, with your permission, I would like to
19 first address farmers' concerns about the settlement
20 notification itself, the packet, and then I will get to
21 the settlement.

22 There are a variety of farmer experiences woven in
23 to help illustrate the points. I am trying to keep it
24 brief, but there is a lot of material, and I think you
25 should be made aware of it.

1 With regard to the settlement notification, here is
2 what farmers have told us: Some had not received a
3 packet, simply a notice that they would be receiving
4 one. They were not aware that there was an opportunity
5 to oppose the settlement.

6 Those that did receive a settlement packet wanted
7 to know why the actual settlement itself was not
8 included in it for them to read. I tried to explain
9 it's probably not usually procedural. They were not
10 interested in that excuse. Many farmers do not own a
11 computer or do not know how to operate one. The average
12 age of dairy farmers -- I believe Mr. Swantak said
13 this -- is 57 years old. That's not to say that you
14 can't learn things, but they don't need a computer in
15 their everyday work, so learning to use one has not been
16 a priority. And with the immense implications with the
17 settlement, they just felt that it should have been
18 included right there in a hard copy for them to read.

19 Also, the Amish avoid this type of technology
20 altogether, so it's very difficult for them to be able
21 to get the settlement. Even if they were not going to
22 claim, they still would have had an opportunity to read
23 it and perhaps send in letters, like some of the Amish
24 community did.

25 Being that the packet was sent out using -- using

1 our money through the proposed settlement fund, farmers
2 wanted a hard copy, which would be more useful to them,
3 especially to read the release of what they would be
4 giving up.

5 Number three. Most farmers are fearful to openly
6 oppose this proposed settlement. I spent a little time
7 on this, so I will try not to get too lost. They told
8 us that to send a copy of a letter in opposition to this
9 proposed settlement to DFA, DMS defendants, which is
10 what was part of the process, would be to send a letter
11 of complaint about your boss to your boss. They feared
12 possible repercussions, which some had already
13 experienced, just for questioning our so-called
14 cooperative.

15 Your Honor, please allow me to explain how dairy
16 farmers are compensated for their work, to better
17 illustrate our predicament. I know we have heard a lot
18 about PI count of bacteria and all these different
19 things, but having a teaching background, I thought it
20 would be helpful to actually -- let's look at these
21 things, what is your milk analysis, and that's what I am
22 going to be doing. Forgive me if you are already
23 familiar with these items.

24 So to do so, I would like to show you a copy of a
25 milk analysis sheet, which every dairy farmer receives

1 on a monthly basis, and then a corresponding paycheck
2 for the same period so that you would be able to see,
3 okay, this is what your -- the consistency of -- what
4 makes up your milk and then this is how you are being
5 compensated.

6 Okay. So please refer to Exhibit B while I attempt
7 to use this machine.

8 THE COURT: You say "this machine." It's easy
9 enough for a judge to use, so --

10 CLAUDIA HAAR: I love when you say that. I
11 have used that phrase at home with my own children,
12 "Easy enough even Mom knows how to do it."

13 THE COURT: Okay.

14 CLAUDIA HAAR: Okay.

15 (Brief pause.)

16 CLAUDIA HAAR: Technical difficulties. Please
17 stand by.

18 (Brief pause.)

19 CLAUDIA HAAR: As you can see, what you are
20 looking at is the front side of our butterfat protein
21 OS, which is other solids, results from December, but I
22 am jumping ahead.

23 At present time, DFA, DMS analyzes or -- we call it
24 tests our milk. This, in itself, I would say, is a
25 questionable business practice. Any other industry

1 dealing in weights and measures is externally regulated
2 by government agencies. For example, it's not
3 appropriate for gas stations to calibrate their own gas
4 pumps being that their measure is used in the
5 calculation of the purchase of fuel. This is why we see
6 a seal from the state on gas pumps verifying that they
7 have been inspected and that they are -- have integrity
8 with regards to what they are measuring.

9 So the fact that DFA, DMS measure -- measures the
10 quality of our milk and our components, that's why I am
11 trying to emphasize that this is a very serious matter,
12 and it's questionable because they are the ones who are
13 going to be compensating you.

14 So farmers are primarily interested in butterfat
15 and protein levels in their milk because these
16 components make up the largest portion of our
17 compensation, as we will see when we look at the milk
18 check.

19 So I am just going to point this out here. Okay.
20 On the left here, I am pointing to the dates. Actually,
21 you can see that date, all the way down. This is for
22 December.

23 Your next column, moving to the right, it says
24 "Bfat" is butterfat. So that's your percentages. You
25 hear about two percent milk people buy? And that sounds

1 like it's really low. Well, probably the most is going
2 to be five percent, so it's not -- it's not too -- too
3 different.

4 The next one is your protein levels. The next one
5 is your other solids that are in the milk. And the
6 MUN -- I don't remember what that one is about, but they
7 don't -- oh, no, I'm sorry, the milk, urea and nitrogen.

8 Okay. Now I am going to move this up, and you can
9 see the top chart -- it's a little bit confusing. The
10 butterfat is, I believe, the solid bars, and the other
11 solids are on the top. Mr. Haar didn't explain this to
12 me, but I am a little nervous. Anyway, the main thing
13 that I want you to see is that farmers are concerned
14 with their butterfat and protein levels.

15 Okay. So if a farmer starts feeding his cows extra
16 corn silage due to an overabundant harvest, then he
17 should see an increase in his butterfat because that
18 corn is going to be stored as energy, so the fat should
19 go up.

20 However, this was not the case with a fellow dairy
21 farmer who spoke to me. He was suspect that DFA's milk
22 test was not accurate. He called his field
23 representative to come out and test his milk under the
24 guise of checking the PI count, which I will explain the
25 PI count.

1 When the field rep arrived and took the sample, he
2 asked the farmer, "What test did you want me to run?"

3 "Why don't you just run 'em all," the farmer
4 replied.

5 When the test came back, the butterfat component
6 was 4.1 percent. Later that day, the milk truck came to
7 pick up the farmer's milk, and like I said before, every
8 time the milk truck comes, an individual sample is taken
9 of that farmer's tank. So of course he took the usual
10 sample. That test showed up that the butterfat
11 component was only 3.5 percent.

12 Now I realize 3.5 percent, 4.1, doesn't seem like a
13 big difference, but when we look at the paycheck, that's
14 where the rubber meets the road. The sample the truck
15 driver takes is the one that's used to determine the
16 farmer's pay price. This farmer had to argue with our,
17 quote, cooperative to be reimbursed for some of his lost
18 revenue.

19 Okay. So now I am going to put up Exhibit C. This
20 is the other side of the milk quality test. So the one
21 side you have your components of your fat protein, other
22 solids. On the other side, you have your quality.

23 Okay. So let's walk through this.

24 THE COURT: So just a minute.

25 CLAUDIA HAAR: Sure.

1 THE COURT: No emergency. We are just fixing
2 the monitors for people who can't see them.

3 CLAUDIA HAAR: Oh, okay.

4 THE COURT: Okay. Keep going, please.

5 CLAUDIA HAAR: Sure. Thank you.

6 On this exhibit we see -- and I apologize. I had
7 to write at the top. I didn't get to do fancy sheets,
8 but we had baby lambs and they were in the house, which
9 was distracting.

10 Okay, on the far left we have the date here, and
11 then our first column, this shows a supposed quality
12 test result. The first column to the right of the date
13 column is titled "PLC/PAC/ML." This shows your milk's
14 bacteria count, which is related to the cleanliness of
15 your facility and equipment.

16 The second column to the right, titled "Optical
17 Cell Count," measures your milk's somatic cell count,
18 which is related to the health inside your cow's udder.
19 Older cows tend to have a higher somatic cell count.

20 The third column to the right is titled
21 "Preliminary Incubation," which you have heard us refer
22 to as our milk's PI count.

23 DFA, DMS started using this test around 2005. We
24 were told that consumers wanted to be able to leave milk
25 out for an extended period of time. To this day, I have

1 not found one person that has this desire. The nature
2 of milk is that it is perishable, and leaving it
3 unrefrigerated will hasten its spoiling. These facts
4 have not escaped consumers.

5 The preliminary incubation test is conducted by
6 leaving a sample of milk unrefrigerated for 24 hours.
7 You can imagine the bacteria level of this sample, and
8 then they measure it.

9 The PI count is affected by environmental
10 conditions completely beyond the control of the farmer,
11 as our field representative explained to us. Our field
12 representative said, you know, you try to keep things
13 clean and neat, which affects your bacteria, but
14 essentially, because it's exposed to environmental
15 conditions, you can have a high PI count and there is
16 nothing that you have done to contribute to that.

17 THE COURT: I would assume if the testing
18 environment was warmer versus colder, that, in itself,
19 would have a --

20 CLAUDIA HAAR: I am totally in agreement.

21 Our field representative still claims to this day
22 that the highest PI count for the month would be
23 dropped, as we were originally told. But if you look at
24 the bottom of the PI column, to the December average,
25 which would be over here -- I don't know if you can see

1 that -- you will notice the highest PI count was
2 included to arrive in this calculation.

3 I would like to point out that none of our milking
4 practices were changed during this period. In other
5 words, we didn't -- we milked our cows every day the
6 whole month of December exactly the same that we had,
7 and yet we have such an erratic range of data.

8 Because DFA, DMS have linked all three tests --
9 that would be the bacteria, the somatic cell, and the PI
10 count -- we did not qualify for any premium during this
11 month. It used to be that if you kept your bacteria
12 within the range you can see -- let me point to the
13 bottom. Let's see. Let me move it up a little bit.

14 Okay. On the bottom you see that there's a range
15 here of excellent, good, fair, poor, unsatisfactory.
16 And then they have the coinciding numbers for that
17 column to say how your milk ranks.

18 It used to be that the levels -- let's see where I
19 am. Just a moment. Okay. No, that's pretty much the
20 point I was going to make about that. Just that you
21 can -- oh, no, about the three columns. Okay.

22 So it used to be that if you did well and your
23 bacteria -- let's say our bacteria was excellent,
24 between zero and 5,000. Okay, then you would get a
25 price premium, let's say maybe 20 cents extra per

1 hundredweight for that month. And then if you did more
2 poorly in the somatic cell, maybe you were only good or
3 fair, then you might not get that price premium, and so
4 they used to be done independently.

5 But now they are linked all together, which is
6 significant because if the preliminary incubation could
7 be tampered with, then that means that those farmers
8 would not receive any price premium over the top.
9 However, the co-op is still able to market that milk and
10 get the price premium that they want from the
11 marketplace. So essentially they're skimming off the
12 top, not to be redundant. Okay.

13 I would like to now turn to Exhibit D. This is the
14 corresponding milk check that shows how Mr. Haar and I
15 were compensated for our milk. At the top you can view
16 all of our milk analysis information. So basically they
17 shrunk what we just were looking at in Exhibit B and C.
18 Exhibit B data is on the left, while Exhibit C data is
19 on the right.

20 Below this section is the pricing information.
21 Please follow the butterfat and protein lines all the
22 way to the right, while I try to point at the same
23 time -- here we go -- all the way to the right to see
24 that these two components contribute the largest
25 monetary compensation of our payment.

1 Your Honor, you may have been flooded by 10,000
2 letters and/or requests to speak in opposition to this
3 proposed settlement if farmers were not acutely aware
4 that DFA, DMS has the ability to directly affect their
5 paycheck by controlling their milk testing.

6 This point was reinforced when I met a perfect
7 stranger on January 3rd of this year. We were on our
8 way to Jonathan's mother's 90th birthday celebration.
9 We stopped in Price Chopper to pick up some last-minute
10 items. Jonathan and I split up in the store to be more
11 efficient, and he handed me a copy of our letter to
12 alert farmers of this proposed settlement and the
13 effects it might have on them.

14 This is Exhibit E. So this is a letter that we had
15 put together jointly -- you can see on the second page
16 of it -- with Ralph and Garret Sitts and Richard
17 Swantak, because once the notification had gone out
18 about the settlement, we felt it was our responsibility
19 and duty to let farmers know, "Here's something you
20 really need to pay attention to," especially because it
21 was through the holiday season, which is challenging in
22 terms of time.

23 Okay. So Jonathan hands me one of these letters
24 and says, "Just look for a farmer." That's what he
25 said. I was successful in picking out an older farmer

1 in his well-worn Carhartt overalls and jacket and his
2 well-worn hands too. After patiently listening for a
3 minute, his immediate comment to me -- this is the first
4 thing he said -- "Aren't you worried about your somatic
5 cell count?"

6 Now, why would he say that if he didn't recognize
7 the significance of DFA, DMS being in control of our
8 testing? As a retired, life-long dairyman who now
9 raises beef, this man knows the game all too well and
10 was concerned for us.

11 Farmers have also been reticent to openly oppose
12 this settlement because DFA, DMS controls the milk
13 testing of every tractor-trailer load of milk. If they
14 say that your farm has contaminated a load, then you
15 have to pay for that load, approximately \$20,000 at the
16 current milk price.

17 In other words, your sample that's taken from your
18 farm, they analyze that, and all of your milk gets
19 sucked out of the tank, goes into the big tanker, and
20 depending upon if it's a smaller truck or the full-sized
21 tanker -- I believe the full-sized tanker is 90,000 --
22 I'm not exactly sure, but it holds a tremendous amount
23 of milk, suffice to say.

24 And so if your milk -- like let's say you had to
25 treat a cow that had an infection, so you treated him

1 with some penicillin, you were supposed to withhold that
2 milk until that penicillin comes through the cow's
3 system. If, by accident, the cow kicks the pail and
4 some of that milk goes into your milk and contaminates
5 it, or if you put that cow's milk in by accident because
6 you forgot, then that milk of your milk tank, when it
7 goes into the larger milk tank, it contaminates all of
8 that milk. Okay. So that's why you're responsible for
9 the full value.

10 Usually by the time the farmer is informed, the
11 milk has already supposedly been dumped, so you cannot
12 take an independent sample. I say "supposedly" because
13 there's been many people that have had this experience
14 where they are told by DFA or DMS, "Your milk
15 contaminated a tanker load of milk, and so you need to
16 pay." That milk is gone, so you cannot go and try to
17 get an independent sample. It's their word against your
18 word.

19 And I think that's why -- I think it was Mr. Ralph
20 Sitts had mentioned about the \$20,000 that we would be
21 getting as class representatives. "Oh, you know, that's
22 a big amount of money." That can be gone like that. So
23 the money is not an issue.

24 Another reason that farmers are apprehensive to
25 openly oppose this proposed settlement is because of the

1 monopoly that DFA, DMS hold on the milk market. I spoke
2 to a farmer who was a partner owner of a 2,000-cow
3 dairy. He wasn't sure if he should speak out against
4 this settlement. "Where would I sell my milk if they,"
5 meaning DFA, DMS, "take away my market?"

6 I assured him saying, "I don't condemn you.
7 Whatever you decide. I know you have a lot of families
8 depending on you." We can always eat venison and eggs.
9 We sell eggs also, so we have a lot of eggs. The
10 farmer -- this farmer, along with so many, asked me to
11 please not name them.

12 Jonathan and I have experienced harassments by DFA
13 since we became involved with this lawsuit. We started
14 having multiple inspections at -- when -- at times when
15 you normally wouldn't. You would have one inspection,
16 and you passed; you go on. But since we signed up as
17 class representatives, that hasn't been the case.

18 And we started having these multiple inspections
19 particularly before Jonathan's deposition and prior to
20 him speaking to the Court. We never could figure out
21 exactly how defendants seemed to know about these
22 events. It seemed like it was too much of a
23 coincidence.

24 For the first time ever, we were threatened to be
25 dropped by the cooperative when our milk inspector

1 complained about the excessive mud around our barnyard
2 just after Hurricane Irene. At that time, we were
3 shipping good to excellent quality milk, so here all of
4 the scientific proof is that your milk is -- is
5 excellent quality, and yet he came to the farm and he
6 saw the mud, which I believe Rutland had quite a time
7 with that hurricane, you know, these -- these items are
8 beyond our control.

9 Fellow farmers were not able to get milk poundage
10 information -- okay, this is -- I am going on now. That
11 was a long section having to do with why farmers would
12 be reticent to bring up objections.

13 Now I am going on to my next point, which is about
14 fellow farmers were not able to get milk poundage
15 information from the market administrator telephone
16 number that was given on the proposed settlement
17 notification. I realize someone already covered this,
18 but I will go on.

19 They expressed frustration about trying the number
20 over and over, in between farm work, because the market
21 administrator's hours, I believe, only go till five
22 o'clock.

23 As a class representative, Jonathan called the
24 market administrator himself. Eric F. Rasmussen, in the
25 Boston office, was not available. Jonathan was directed

1 to Mr. Rasmussen's counterpart in the Albany office,
2 Peter Fredericks. Mr. Fredericks explained, and I
3 quote, "We're not party to this. We were dragged in."

4 When Jonathan asked if anyone had called to ask
5 permission to give the market administrator's number,
6 Mr. Fredericks said, "No. If someone would have called,
7 I'm sure Eric would have let me know. We talk all the
8 time." Mr. Fredericks was told that Rust Consulting was
9 at fault. Mr. Ben Brown had told Garret Sitts and
10 Jonathan that Cohen would not use Rust Consulting again
11 after a number of blunders with the Dean settlement,
12 which they handled.

13 Mr. Fredericks also commented about the boundary of
14 Order 1. Remember, he works at the market
15 administrator's office. He commented on the boundary of
16 Order 1 being used in this case, which leaves out
17 farmers who sell into Order 1 but do not reside in. And
18 I quote, "If they," referring to plaintiff counsel,
19 "wanted to maximize the number of claims" -- in other
20 words, farmers relieved -- "they would never have
21 handled it like this."

22 Your Honor, before I go on with farmers' issues
23 dealing with the settlement itself, farmers insisted
24 that I ask you if you know what the protocol is or if
25 there is a protocol for farmers who have openly opposed

1 this proposed settlement, in the event that they
2 experience retaliation from DFA, DMS, either now or in
3 the future? They were asking me, "Do we call the Court?
4 Are we supposed to call counsel?"

5 I said, "I have no idea if there even is any type
6 of protections in place." So, I don't know if you know,
7 and maybe you can get back to us.

8 THE COURT: So, you have the settlement
9 agreement, and it has a provision in it, and as your
10 fellow class representatives who talk about how is it
11 enforced, where's the protection, who has the burden of
12 proof, those are some of the questions I have for the
13 attorneys.

14 In the absence of that, you have the rights of a
15 citizen. If you think a crime has been committed, you
16 call the police. If you think your civil rights have
17 been affected, you file a lawsuit.

18 So there isn't any special protection that comes
19 out of being in a lawsuit, but I believe the courts take
20 a serious claim seriously.

21 CLAUDIA HAAR: Okay. Thank you. I'm sorry.
22 I didn't mean to jump ahead.

23 THE COURT: No. That's fine.

24 CLAUDIA HAAR: I didn't know that was going to
25 be one of your questions for counsel.

1 In trying to organize farmers' concerns about the
2 settlement, I was grateful to find and will now use the
3 nine-factor framework that this -- that the Second court
4 has identified in determining whether a settlement is
5 fair, adequate, and reasonable.

6 Number one, the complexity, expense and likely
7 duration of the litigation. I deal with these issues
8 one at a time, and I deal with them in the most length.
9 So it's -- the rest -- I won't spend as much time on
10 each of the nine, just to spare you.

11 How complex is this case? While there is a level
12 of complexity to our case with regards to figuring out
13 damages, which most of them have been figured out
14 already, the body of this case is so simple that even a
15 dairy farmer can figure it out.

16 DFA, DMS is not a cooperative at all, according to
17 the Capper-Volstead term that it must operate, and I
18 quote, for the members' benefit of its -- for the mutual
19 benefit of its members.

20 Our collective experiences have proven this. DFA,
21 DMS should not be immune under any Capper-Volstead
22 protections, especially their consolidation of the milk
23 markets as is alleged in this case.

24 Okay. Now I will direct your attention to
25 Exhibit F.

1 THE COURT: So, Jen, what happened to the
2 system?

3 MS. JEN: Did you want to show Exhibit F?

4 CLAUDIA HAAR: No, no, no. It's an article.

5 THE COURT: Okay.

6 CLAUDIA HAAR: I figured you folks could look
7 at that.

8 I applaud Christine A. Varney. She is the
9 Assistant Attorney General of the antitrust division at
10 the United States Department of Justice who so clearly
11 explains the intention of Capper-Volstead in her
12 thorough article I have included as Exhibit F.

13 I appreciated this because I was not fully
14 understanding what the implications of Capper-Volstead
15 was, and so it gave me quite an education. That's why I
16 have included the entire article. Also, with regards to
17 Ms. Varney's position, I think that it should be
18 considered seriously.

19 In fact, this article was so powerful in its
20 implications with regards to our case directly that five
21 months later Senator Charles E. Schumer from New York
22 wrote to Ms. Varney urging her to leave the antitrust
23 laws alone as they relate to dairy cooperatives. So
24 obviously this must have struck a chord with someone in
25 the cooperatives, and they contacted Senator Schumer and

1 said, "You have gotta do something." That's my opinion.

2 I have provided this article and another related to
3 this same topic as Exhibits G and H. I won't read from
4 them right now, but it basically explains how Senator
5 Schumer is -- is asking Miss Varney, you know, "Please
6 don't touch this area of law because it's very important
7 that we keep it in place." Of course, he has his
8 motivation. And I do know that, as a cooperative, we do
9 donate money to various political causes.

10 And the second one, "Regulations May Hurt Dairy
11 Co-ops," this is Exhibit H. They both have the same
12 author. I should stop and explain that. Mark Heller
13 wrote both of these articles. They are both from the
14 Watertown Daily Times. Interesting, Mark Heller's
15 mother grew up on a dairy farm down in Chenango County,
16 which is just 10 minutes from where we live.

17 Okay. So this article, "Regulations May Hurt Dairy
18 Co-ops," Mark Heller interviewed Edward Gallagher, vice
19 president of economics and risk management at Dairylea
20 Cooperative. To summarize it, what he says is that
21 regulations may hurt dairy cooperatives. It might make
22 it difficult for them to operate and do the business
23 that they do on behalf of farmers.

24 Dairylea merged with DFA officially in April 2014.
25 So while he was not representing DFA, DMS per se, they

1 are now officially merged. And I found out that
2 information from Mark Heller because I had called him to
3 get his permission to use his article.

4 Interesting also, two years after he had written
5 these articles, his job at the Watertown Daily Times was
6 ended. They closed that position. So he works
7 someplace else now.

8 Why our counsel did not clearly represent
9 simplicity of the body of our case to your Honor remains
10 a mystery. At the class certification hearing,
11 September 26th, 2011, your Honor asked these questions
12 of Mr. Kit Pierson, and I quote: "Who is doing what to
13 whom and why?" This was almost two years into the
14 litigation.

15 Unfortunately, instead of answering your Honor's
16 questions, Mr. Pierson spent quite a bit of the Court's
17 time explaining the defendants' position. Perhaps that
18 was because he was -- he has 24 years' experience as a
19 defense attorney, largely in antitrust and class action
20 suits. After that time, Mr. Pierson was hired by Cohen
21 Milstein in 2009, when this case was filed.

22 After the class certification hearing, in September
23 2011, we asked our counsel to please answer your Honor's
24 basic questions. We said, "She needs to understand the
25 fundamentals of the case." But what do we know? We're

1 only farmers. They would not.

2 In October 2011, Jonathan handwrote a note to
3 address these issues and sent it to the Court. We
4 didn't know that that wasn't protocol, and being
5 farmers, you run into problems; you're on your own. So
6 you try to solve them as clearly and directly as you
7 can.

8 Okay. So we learned that the proper protocol was
9 to sent the information via our counsel. No problem, we
10 thought. We then asked counsel to file Jonathan's
11 letter. They would not.

12 Some months later, Terry Sullivan, who is a highly
13 regarded attorney with BakerHostetler, a woman who has a
14 lot of experience and is highly regarded, offered to
15 help Jonathan with the declaration to get this
16 information to the Court. So the two of them worked on
17 it. Mr. Haar was very -- felt very satisfied that the
18 product said what he wanted to say, but he was able to
19 take some help in terms of making it legible, at the
20 least.

21 Mr. Pierson insisted on critiquing the document.
22 Jonathan disagreed with all the neutering of his salient
23 points by Mr. Pierson. There was no sense in continuing
24 to argue. Mr. Pierson put his final version in double
25 envelopes. Jonathan was instructed to sign the

1 declaration and send it to Andy Manitsky, who would then
2 file it with the Court.

3 The UPS lady came down our long driveway. We live
4 on a dead-end road. The kids all hollered, "She's here.
5 She's here." When she presented the large envelope,
6 Jonathan ripped it open, he took out Mr. Pierson's
7 version and put his original document, signed, into the
8 smaller envelope, and sent it on its way.

9 Cohen only found out two weeks later when Jonathan
10 expressed his relief to Ms. Sullivan of finally having
11 answered your Honor's questions that are foundational to
12 our case. We have included Jonathan's original
13 declaration, which is Exhibit I; the critiqued version,
14 which is Exhibit J; and I'm sorry, but I failed to -- I
15 have the third version, which was Mr. Pierson's version
16 that he had put in the envelope that we took out.

17 We realized that this was a little extreme to go
18 through this process, but we needed to make sure that
19 Mr. Haar's declaration was indeed the words that he
20 wanted to declare.

21 This experience contributed to us questioning
22 Mr. Pierson's loyalty and violations related to Rule
23 23(g)(4). There are so many experiences that I could
24 share of how Mr. Pierson and Cohen and Milstein fought
25 against us and this case, making it much more complex,

1 but I will refrain.

2 What does all of this mean, what I have presented
3 you, articles about Capper-Volstead, issues we have
4 with -- with our counsel? What does it all mean?

5 As we read through the papers of our case
6 proceedings and attended hearing after hearing, we
7 wondered, why is there so much confusion? We know our
8 case, but what we're hearing and what we're reading is
9 not adding up. Like your Honor asked, who is doing what
10 to whom and why?

11 It finally came to me, after a nightmare at 5:45
12 this morning. It's a nightmare for several reasons. I
13 will be honest. We have worked with this counsel for
14 quite some time, and there's no pleasure in having to
15 share this information, but it's only because I love
16 them. Like I tell my children, "I love you. That's
17 why, if you are doing something wrong, I have gotta
18 correct it. It's for your own good."

19 Your Honor, there are actually two nightmares of
20 injustice going on here simultaneously. The first is
21 that DFA, DMS has taken a perfectly sound structure,
22 that being of the dairy cooperative, which literally was
23 meant for dairy farmers working cooperatively to market
24 their milk. DFA, DMS has corrupted this system by
25 misusing Capper-Volstead in a two-fisted approach: In

1 the one fist, oppressing the producers through
2 monopsony, while at the same time, in the other fist,
3 oppressing the processors through monopoly.

4 I'm sorry. I said that wrong.

5 The first fist is oppressing the producers through
6 monopsony, while at the same time oppressing the
7 processors through a monopoly. This is a brilliant
8 plan, but so was Hitler's. Evil is evil.

9 Now, the second nightmare of injustice. Our
10 counsel has taken a perfectly sound structure of
11 antitrust class litigation, whereby citizens of this
12 great nation are able to find justice against illegal
13 oppressive behaviors of giants, which we otherwise, on
14 our own, would not be able to do, or so we thought.

15 How does this work, you may ask? Your Honor, it's
16 simply a game of cat and mouse. Counsel gets
17 information from class representatives, and we are all
18 too happy to share this information because we're
19 thinking, This is going to lead to justice, and we are
20 going to have change, and there's going to be a brighter
21 day for dairy farming, the economy of -- the world
22 economy, our children.

23 But they get just enough information to hold
24 defendants' neck up against the wall, and then they say,
25 If you just give us the money, nobody will get hurt.

1 Our counsel has corrupted this system by
2 specifically addressing off-target issues designed
3 specifically not to affect any of the business practices
4 of the defendants, thereby not providing any relief
5 whatsoever for the dairy farmers or even for the
6 processors.

7 They have addressed these off-target issues
8 voluminously, as you know. I have heard you say, and I
9 believe it, that you read every word that comes across
10 your desk. So I'm going to refer to Exhibit K just for
11 a moment. Page two of this -- this is an article from
12 Laws360, which is a law publication, and it deals
13 specifically with our case.

14 I would like the Court at a later time to be able
15 to read all of it. They speak about your ability to
16 split the baby, which refers directly to King Solomon's
17 wisdom in trying to figure out justice. It's quite an
18 honor.

19 So this article is titled, "Milk Processors Soured
20 After Rare Monopsony Ruling." I am not going to deal
21 with the article right now -- I will in a few moments --
22 but I am going to direct your attention to page two,
23 right underneath the boldface title saying "Plaintiffs'
24 Sundry Antitrust Claims, Conspiracy, Monopsonization,
25 Attempted Monopsonization and Price Fixing Claims."

1 For the plaintiffs' remaining claims, the court
2 effectively split the baby. And after exasperated
3 admonishment of both sides' extensive lists of
4 undisputed facts -- and then they list how many was in
5 each one -- the court ultimately -- and then it goes on,
6 and I will deal with that in a minute, that you were --
7 you were basically buried in all of this information
8 that was undisputed facts but were still able to bring
9 some semblance of understanding out of it.

10 Most recent time is the first page in the last
11 filing that the defendants and the plaintiff counsel had
12 given you, I believe it was supposed to be in seven days
13 before this hearing. And the first page in this packet
14 is the request to exceed the page limit. I know you
15 have said, and as a teacher I completely concur, that
16 you should be -- if you are intelligent, which these
17 gentlemen are, and ladies, you should be able to state
18 your points succinctly as possible. So why the
19 exceeding of the page limit? Why this big workload?
20 We'll get to that.

21 Joshua has done research and found that Cohen
22 employs this strategy often, the first page saying,
23 Could we please exceed -- of course you don't have a
24 chance to respond because then you have the whole
25 voluminous filing before you. Did they think that they

1 would fool you, your Honor? Or perhaps they would weary
2 you to just sign off on this settlement and make them go
3 away. I won't ask you, but I'm sure that the thought
4 might have crossed your mind.

5 What they didn't account for in all of their
6 schemings was providence. It is my belief that God
7 Almighty has put you in this position for such a time as
8 this. That is why you, your Honor, who were looking for
9 truth, and we, who were looking for justice, were
10 thoroughly frustrated, until now.

11 This fairness hearing will prove fair in only one
12 way: It is that we have had this opportunity, as
13 farmers, to deliver the truth directly to you about what
14 has been going on here.

15 Your Honor, that you may serve justice that we are
16 seeking, that is why we are delivering this truth to
17 you.

18 And I will make a side note that -- I think it only
19 came to me that -- early this morning, not that I slept
20 very well this whole week, because I realized that the
21 words that I am saying are very weighty and they have
22 strong implications, and this is not really a place that
23 I wanted to go to. When I signed up to be a class
24 representative, I was looking relief for fellow farmers
25 and our farm and looking at the future of dairy farming.

1 I had no idea that we were going to be able -- we were
2 going to be realizing that there is this corruption
3 going on, not just with the defendants, but also with
4 our own counsel.

5 So that is why I use the term about it's a
6 cat-and-mouse game, you know. We will beat you up a
7 little bit, but really not too hard. Hand us the money,
8 and we will go away for a while. It's also job security
9 because, being that they're not going to change anything
10 that they do if we agree to the settlement, then in 10
11 years we can be right back in here again and be able to
12 keep busy.

13 I would like the Court to know that we did search
14 for additional or potentially new counsel. It's not
15 like we haven't tried. We have called antitrust firms
16 all across the country. We heard many excuses. The
17 last firm was kind enough to be honest and explain that
18 the world of antitrust lawyers is rather small, and it
19 was doubtful if we would get anyone to step on the toes
20 of our current counsel.

21 My son Elijah, who is here today, recognized this
22 immediately as an unwritten nonsolicitation agreement.
23 Thank you all for the education.

24 One of Mr. Abrams' former colleagues offered to
25 help us add new counsel. This proposed new counsel

1 informed us that if we added or procured new counsel
2 completely, we would run the risk of losing our position
3 as class representatives. We left off our search for
4 now, recognizing that we may need a court order for new
5 appointment, as in the recent Pella case, from the
6 Second -- Seventh Circuit, which was decided June 2nd,
7 2014, where they dealt with appointing new counsel.

8 I will now address the expense of protracted
9 litigation. If I may assume that Mr. Kuney and his
10 associates make the similar 600 to \$800 an hour as our
11 attorneys, then they would be due -- that would be these
12 folks -- they would be due about \$5 million a year for
13 their services.

14 We need to look at this number in relation to the
15 expense of the class for doing business as usual, which
16 would be the effect of taking this proposed settlement.
17 Having spoken to farmers in the Southeast, we know that
18 things have not only returned to business as usual, but
19 as we heard before, that they have become even worse.
20 If it is farmer owned and farmer driven, then why must
21 you give written permission to show up at a meeting and
22 only be allowed to say your piece and then you must
23 leave?

24 Dr. Rausser's damages models have ranged from a
25 billion dollars to the current figure of \$350 million,

1 which we are -- were approved to go to trial with.
2 Taking -- excuse me. Taking the lesser amount of
3 \$350 million in damages, to be conservative, divided by
4 the 12-year period -- this would be from 2002 to 2014 --
5 the expense of the class doing business as usual with
6 DFA, DMS is costing us farmers roughly \$29 million a
7 year. So I don't mind paying Mr. Kuney 5 million. I
8 mean, hey.

9 This is nearly six times the annual cost of
10 continuing this litigation. So, if we project that this
11 case were to take, let's say, another four years, making
12 it 10 years all together -- I like 10 because it's a
13 good round number -- we farmers would have paid out
14 \$50 million to defendant counsel. If we don't sell
15 ourselves out or persevere for something fair,
16 reasonable, and adequate, we would be unencumbered from
17 this \$29 million-per-year expense for milk market
18 suppression that we are already paying.

19 So in less than two years, that \$29 million would
20 pay back Mr. Kuney and the firm of this litigation, and
21 we could start using that \$29 million a year, which
22 would be kept by farmers, to reinvest into our farms,
23 feed distributors, seed companies, farm equipment
24 dealerships, agricultural supply stores, hardware
25 stores, mechanic shops, diners and other businesses,

1 thereby revitalizing our rural, local economies across
2 the Northeast.

3 Your Honor, if this case takes 20 years, then it
4 would take us four years to pay it back. Dairy farmers
5 that I have spoken to said that they would pay this cost
6 for freedom from our oppressors.

7 We are not a class of people that are looking for a
8 handout because we know how to create wealth from the
9 land. We enjoy that hard work. So the idea of getting
10 \$4,000, some money back, means nothing. If we cannot
11 change the structure of how this corrupt model has
12 hijacked what dairy cooperatives were meant to be, then
13 we have no relief whatsoever. If anything, it just
14 gives them more strength to just tighten the fist.

15 With regard to the duration of litigation,
16 considering our CEO was previously an attorney from
17 Brooklyn -- that's Rick Smith -- and his administration
18 has painstakingly attempted to conceal their illegal
19 behaviors, it's -- what I am trying to say is that
20 Mr. Smith is a smart man, and they have gone through
21 extensive measures in order to conceal their illegal
22 behavior.

23 Also, our senior vice president, Greg Wickham, is
24 brother-in-law to Lawrence Schwartz. Who is Lawrence
25 Schwartz? He holds the position of secretary to present

1 governor of New York Andrew Cuomo. Like we have
2 recently seen with the current Sheldon Silver case,
3 misconduct at these levels takes time to unravel. It is
4 interesting to note that Mr. Silver, who is a native to
5 lower Manhattan, took position as Speaker of the House
6 in 1994.

7 What on earth does that have to do with what we are
8 here for today? I will tell you. This is the same
9 requested time for the releases of the settlement to
10 begin. Your Honor mentions this odd request that
11 extends roughly eight years prior to this case in your
12 denial of preliminary approval. Suffice to say, this
13 case will take more time to litigate, but the outcomes
14 may have further-reaching and longer-lasting
15 implications than any of us had originally anticipated.

16 I will now address the next factor in the
17 framework. I called it your framework because I
18 misunderstood. I thought this was only Second Circuit.
19 My son Joshua educated me, so -- he says, "Ma, you can't
20 say that." I am just mentioning that because when you
21 get the copy of it, you would be like, Whoa, what
22 happened? That's what happened. The mother was
23 ignorant. Okay. But at least I know how to learn from
24 my mistakes.

25 The reaction of the class to settlement. This is

1 the second factor in our framework. What is the
2 reaction of the class?

3 I noticed a common theme among most of my fellow
4 farmers who are in favor of this proposed settlement.
5 They were honest enough to admit a lack of knowledge
6 about this case in general or the proposed settlement in
7 particular. I would hope that after today's hearing,
8 they would set aside time to research for themselves the
9 claims that we are making. Since DFA, DMS have chosen
10 not to open the record of the case and to keep the
11 majority of the evidence confidential, I realize that
12 their research will be hampered.

13 I would also like to say that we respect these
14 farmers as fellow colleagues and recognize their effort
15 on their farms.

16 It has come to my attention, as a class
17 representative, that there are two other pending
18 litigations against DFA, DMS at this time. Farmers
19 involved see the -- this broad release and the proposed
20 settlement as unfair and completely unreasonable with
21 regard to being able to pursue any further relief for
22 illegal behavior that has recently been discovered, not
23 to mention the future recovery for illegal behaviors yet
24 to be found out. Farmers are wondering about the
25 legality of the broad release as well. They're saying

1 to me, Can they even do that legally?

2 The letters you received in opposition sums up the
3 majority of what farmers think about this proposed
4 settlement. I notice a common element in that many do
5 not want any settlement monetarily, not even injunctive
6 relief. These people want this case to go to trial so
7 that evidence, which currently only rests with class
8 representatives, would be made public. Farmers want
9 justice. If we plant corn, then we reap corn. If DFA,
10 DMS has sown corruptions, farmers want them to reap
11 judgment.

12 Some farmers have said that without any remedy for
13 DFA, DMS cooperative status, the milk market
14 suppression, DFA, DMS testing, and in-house elections,
15 the monetary relief is inconsequential. Some farmers
16 have said that the lawyers could have all the money if
17 they would accomplish the above items of injunctive
18 relief, which would be meaningful and reasonable.

19 We are farmers -- I already said that. Sorry. I
20 jumped ahead of myself.

21 It seems to me that whether you are Donald Trump or
22 a homeless beggar on the street, nobody likes to be
23 stolen from. To accept this unfair, unreasonable, and
24 inadequate relief would be like getting a dead calf back
25 from a crooked cattle dealer who has just stolen your

1 whole herd.

2 Some farmers are weary of this fight. They want it
3 to be over and just go away. This all sounds very nice
4 and appealing, but agreeing to this proposed settlement
5 actually ensures that it won't be over, and it will
6 never go away.

7 How can we give up? I think of my father, Pasquale
8 Catalano, who is a 92-year-old World War II veteran and
9 a Purple Heart recipient. He was a sergeant in B
10 Battery, 359th Field Artillery Battalion, 95th Infantry
11 Division. These men earned the title of the Iron Men of
12 Metz for their notable accomplishment of liberating the
13 French city of Metz. Each person in that generation did
14 their part. Collectively, they triumphed, bringing
15 deliverance to those in concentration camps and an end
16 to the war.

17 I am grateful and proud of that generation, but I,
18 too, realize that the price of freedom is eternal
19 vigilance. As Benjamin Franklin put it: How can I
20 expect our six children to value freedom, stand up for
21 truth, and fight for liberty, if I am not willing to
22 sacrifice in the face of such a great injustice? This
23 is how I, as a farmer, feel about this case in general
24 and this sellout of a proposed settlement in particular.

25 Counsel has attempted to devalue farmers'

1 opposition in this settlement. They say that they know
2 what is in the best interests of the class. I will just
3 address one letter that they commented on, which was
4 Mr. Eby's letter of -- in opposition to the settlement.
5 Counsel's argument against Mr. Eby's claim is that he
6 used the Southeast litigation case in comparison to this
7 Northeast litigation case, which I find is quite ironic
8 being that these attorneys completely rely on their own
9 ability to take similar cases and match them up to their
10 arguments -- or perhaps their paralegal's ability, to
11 match their own -- these similar cases to their
12 arguments in order to litigate them. This is exactly
13 what Mr. Eby did, and he doesn't have a law license.

14 So in the words of my son Benjamin, who is not here
15 today -- he is taking 19 credits in animal science to be
16 a veterinarian, so he is looking to stay in the
17 agricultural community -- the relation -- this is what
18 Benjamin said: The relation between a lawyer and
19 farmers is like that of a potato in a corn crib.

20 Your Honor, counsel's criticisms of farmers in
21 opposition are rendered irrelevant with their choice of
22 maintaining ignorance as to our concerns, risks, and
23 livelihood as farmers. I received permission from
24 Anthony Bilinski to use the last portion of his letter
25 to sum up what the majority of the class thinks about

1 this settlement. This is a gentleman who lives nearby,
2 and -- and he opposed the settlement.

3 And I quote -- you have a copy of it. I quote,
4 "Yes, I know I will likely pay dearly for this letter if
5 you choose to ignore it, but there is a saying which I
6 believe applies here. All it takes for evil to triumph
7 is for good men to do nothing."

8 Okay. So now we get to move on to the third factor
9 in the framework in trying to determine whether or not
10 the settlement is fair, reasonable, and adequate: the
11 stage of the proceedings and the amount of discovery
12 completed.

13 Despite the fact that this Court instructed
14 both defendants and subclass counsel at the August 1st,
15 2013, hearing that if they were going to settle, now is
16 the time. I remember you specifically saying that. You
17 explained about the -- you explained the effort and
18 resources involved in preparing for a jury and trial.

19 As the Court is aware, we were just 18 days from
20 trial when defendants and subclass agreed on a monetary
21 settlement and notified the Court, before any of us
22 class representatives, that only some injunctive relief
23 need be ironed out. We are as far along as we can be to
24 trial, save the motions *in limine*, hearing and trial.
25 So we have an established case. We have our damages

1 ready to go.

2 Number four: the risks of establishing liability.
3 We were told by Mr. Ben Brown that he couldn't wait to
4 take this case to trial. An attorney at Baker had told
5 us that they were sure we would win at trial. Their
6 only concern was that they -- was what they would
7 receive in damages. Because you remember, with the Dean
8 settlement, they did not receive all that they requested
9 from this Court.

10 I have provided a copy of the article, Exhibit K
11 from Law360, whose title says it all: "Milk Processors
12 Soured After Rare Monopsony Ruling." This article was
13 written about our case specifically and after your
14 summary judgment ruling. To quote the article, "The
15 Court" -- this is where I left off before, saying that
16 after you had all this piles of undisputed facts to work
17 through, you ultimately found that genuine issues of
18 material fact persisted, and the conspiracy,
19 monopsonization, and attempted -- monopsonization claims
20 must be decided by a jury.

21 In this case, the macroeconomic impact doesn't
22 favor the monopsony with regard to the consumer because
23 they receive no benefit. In other words, for all of the
24 suppress- -- oppressive behaviors of DFA, DMS, whether
25 they pay us more as farmers or less as farmers, when you

1 go to the store, the price remains the same. So it's
2 not like, Well, we paid the farmers less, and then when
3 you go to the store it's a little bit cheaper, so
4 consumers are getting some benefit. They are
5 essentially using their power on both ends of the
6 spectrum, as a middleman has the power to do.

7 Number five: the risks of establishing damages.
8 Our case made it through summary judgment with
9 \$350 million in damages to proceed to trial with.
10 That's all that I have about that. That was pretty
11 quick. So pretty much we are in good shape.

12 The risks of maintaining the class through the
13 trial. Your Honor, I noticed in the defendants -- in
14 the defendants -- of the proposed settlement, filing of
15 memorandum of law in support of the dairy farmers'
16 subclass motion for final approval of the postsettlement
17 with defendants, that -- the last filing that they made
18 seven days ago, that although they have a heading which
19 includes maintaining a class action through trial, there
20 are no arguments listed in that section.

21 Your Honor went through a rigorous analysis before
22 certifying subclasses. We have no reason to doubt that,
23 having been established, they would not be maintained
24 through trial.

25 The ability of the defendants to withstand a

1 greater judgment. Do the defendants have the ability to
2 withstand greater judgment? Yes. We have attempted to
3 clearly explain how the defendants have unlimited access
4 to our capital.

5 Eight: the range of reasonableness of the
6 settlement fund in light of the best possible recovery.
7 Our best possible recovery is that we win at trial with
8 our damage model of \$350 million being trebled, to equal
9 1 billion, 50 million dollar recovery. In light of
10 this, the settlement fund is completely unreasonable.

11 The range of reasonableness of the settlement fund
12 to a possible recovery in light of all the attendant
13 risks of litigation. Mathematically, \$50 million
14 represents about 4.4 or 4.8 percent recovery. In order
15 for this to be reasonable, we would have to have a
16 greater than 95 percent chance of losing at trial.
17 Prior to the blurring influence of settlement, our own
18 counsel would never have assigned this case to that
19 level of risk. The lack of injunctive relief, coupled
20 with the release, renders this proposed settlement worse
21 than if we had went to trial and lost.

22 In conclusion, your Honor, we farmers want to thank
23 you for seeking out truth to bring about genuine
24 justice. You have not been willing to just play the
25 good old boys' game. Thank you for your patience.

1 And in summary, your Honor, here is our position:
2 We have the mountains of Sinai on our right. On our
3 left, Pharaoh and his armies who, for a moment, heard
4 our cry of "Let my people go." But at the last, have
5 turned to pursue us, only to drag us back to Egypt and
6 the bondage we endured.

7 We beseech you, your Honor, as our guardian, with
8 the power to eviscerate the oppressors, to rend the
9 settlement asunder before us with prejudice, that we
10 might fight on into the promised land, a land flowing
11 with milk and honey. Thank you.

12 THE COURT: Thank you.

13 Does anybody else want to speak?

14 KENNETH DIBBELL: Your Honor, I would like
15 to vehemently oppose this settlement.

16 THE COURT: So, first things first, your name.

17 KENNETH DIBBELL: Kenneth Dibbell.

18 THE COURT: Kenneth Dibbell.

19 KENNETH DIBBELL: You have it.

20 THE COURT: And I do have it, and it's spelled
21 D-i-b-b-e-l, right?

22 KENNETH DIBBELL: Two Ls.

23 THE COURT: Two Ls.

24 KENNETH DIBBELL: Going back, I would like to
25 vehemently oppose the settlement as proposed as being

1 totally unfair to the producers in Federal Order 1
2 versus those in the Southeast case. There is no
3 comparison.

4 I'd like to do a little history on farm numbers. I
5 was born just 17 miles from here -- correction, 26 miles
6 from here. Grew up a lot in Stowe. All during World
7 War I, boy -- World War II, 1940, we had 4.66 million
8 expected dairy producers in this country. Today, we
9 have 1 percent of that number, 46,000, is all the
10 producers we have left in this country. And a very
11 large portion of the milk is being made by a small -- 20
12 percent of the farms, the large farms.

13 It's been a total injustice how the dairy community
14 family farms have been treated by the federal
15 government, by their cooperatives, period. When it
16 comes to cooperatives, on the milk-testing issue, my
17 cooperative shipped milk to Kraft Foods for 10 years
18 under two contracts, through -- we had an independent
19 lab do the butterfat, bacteria, et cetera.

20 Well, DFA, DMS convinced Kraft to buy their milk
21 from them instead of from the South New Berlin Co-op.
22 We had a choice. We had no market for our milk other
23 than DMS, or we could have hauled it all the way to
24 Winchester, Virginia, and our trucker wasn't real
25 impressed with that. So we signed up with DMS. In the

1 first two months, everybody's butterfat went down two or
2 more points, their bacteria went up, and their somatic
3 cells went up. The same milk had been testing good for
4 10 years. That's just an illustration of the
5 hanky-panky that goes on with DFA, DMS.

6 The federal government is equally responsible for
7 this fiasco that has put 99 percent of the dairy
8 producers out of their business. They have stolen
9 their -- their heritage and ruined their livelihood.
10 You have heard it -- farm families say here their kids
11 are not interested. Well, it is hard work. There's a
12 lot of reward monetarily, but those kids who grew up on
13 the farm and learned to work are still out there working
14 somewhere. Those who grew up in town and didn't learn
15 to work are now living off the system. Second and third
16 generation. Outrageous.

17 Federal government has created several so-called
18 safety nets to protect dairy farmers, none of which
19 worked. Price support system works better than most,
20 but it cost the taxpayers quite a lot of money because
21 they had to buy their surplus product and give it away.
22 Well, now we have got 46 million people on food stamps.
23 That's not a small bill.

24 I don't have that one with me.

25 THE COURT: I did read your whole letter.

1 KENNETH DIBBELL: I beg your pardon?

2 THE COURT: I did read your whole letter and
3 the attachments.

4 KENNETH DIBBELL: The part that I left back
5 there, you have it in your packet. I'd appreciate it if
6 you study it. I have got one in my hand, just one more.

7 THE COURT: Sure.

8 KENNETH DIBBELL: USDA Economic Research
9 Service calculates the cost of production on a U.S.
10 dairy farm, 50 cows or less, as \$50.84 per
11 hundredweight. Go to a hundred cows, it's \$40 and
12 change. It doesn't get down to \$27 until it hits a
13 thousand cows. This should be fixed, but we have been
14 trying for a long time to get a price hearing in
15 Washington. Well, it hasn't happened.

16 And it's -- our Senator from New York, Kirsten
17 Gillibrand, had it in her farm bill proposal that, upon
18 request, the secretary would have to hold a price
19 hearing, if we could ever get a hearing, we could get
20 this thing on a fair pricing basis, at least.

21 Senate Bill 1645 from 2007, the Casey-Specter bill,
22 would have prevented this current disaster and a loss of
23 a lot of farms in between because it had supply
24 management function. If it continued to grow
25 oversupply, those who were causing it were going to get

1 less for their milk, and they were going to maintain the
2 pay price for the lesser producers. Their heritage.
3 But didn't happen.

4 One more, and I can't remember it. Thank you for
5 listening.

6 THE COURT: All right.

7 KENNETH DIBBELL: And study your paperwork.

8 THE COURT: I will.

9 KENNETH DIBBELL: Thank you.

10 THE COURT: We are going to take our
11 midafternoon break at this time, five to 10 minutes. We
12 will come back and resume our hearing.

13 Anything to bring to my attention before we break?

14 MR. PIERSON: No, your Honor.

15 (Court was in recess at 2:28 p.m.)

16 (The following was held in open court at 2:40 p.m.)

17 THE COURT: We are back on the record in Alice
18 Allen, et al., versus Dairy Farmers of America.

19 And do we have somebody else who wants to speak?

20 LARRY BAILEY: Yes, your Honor.

21 THE COURT: Yes?

22 LARRY BAILEY: Your Honor, my name's Larry
23 Bailey, B-a-i-l-e-y. And I am going to come at this in
24 a little different light of where -- in favor of the
25 settlement agreement.

1 First, I'd like to give you a little intro that we
2 are a family farm. I farm with my wife, my in-laws, and
3 my brother-in-law. We milk 1100 cows in Fort Ann, New
4 York, which is in Washington County, New York. And as
5 you well are aware, it borders Vermont and several other
6 large counties -- or counties in New York State, eastern
7 New York State.

8 And within our county there are several different
9 sizes of farm, from the Amish community now in
10 Whitehall, New York, of 10 cows, to farms that are quite
11 a bit larger than we are. And as you know from our
12 letter, that we are a member of DFA for now. We are in
13 our 15th year as a DFA member and very happy with that.
14 Currently, we are currently shipping between 2.3 and 2.4
15 million pounds of milk a month, and it is mainly going
16 to HP Hood in Agawam, Mass.

17 Previously to DFA, we were with an independent, and
18 we chose to go with DFA for the competitive price
19 advantage. And we wanted to share that there are
20 choices today, and we do have choices today, and on a
21 regular basis, I do look for other options to market my
22 milk. And so far, in 15 years, even though I do talk to
23 one company probably six times a year -- I am good
24 friends with one of the guys who runs it -- DFA has
25 always been able to give us a competitive price for the

1 hard work that we do on a daily basis.

2 And in addition, I'd also like to tell you that
3 we -- in addition to the farm, we also run a grain and
4 trucking company. We -- we sell processed grain to
5 farmers, and we deliver for Cargill Animal Nutrition out
6 of Salem, New York. And currently we have nine units on
7 the road and seven drivers, and we deliver those feeds
8 into New York, Vermont, Massachusetts, New Hampshire.
9 And it's been a very successful company, and we enjoy
10 what we do, and we get to visit with a lot of fellow
11 dairy farmers and become their friends.

12 Furthermore, we also own and operate two farm store
13 locations, one in Fort Ann, New York, and one here in
14 St. Albans, Vermont. And, you know, in these stores, we
15 see different people, we meet people, and we sell things
16 from clothes to boots, fencing, garden supplies. And
17 actually, I just got back from my convention in Denver
18 where we bought perfume and cologne, so that was a
19 little bit different and a little bit out of the
20 ordinary.

21 And we are a member of the class, and we'd like to
22 see this lawsuit come to an end, and we are in favor of
23 the settlement. In business, as you are well aware, and
24 we have been in business for a lot of years, there
25 sometimes needs to be compromises made. These

1 compromises sometimes move to further benefit everybody
2 involved. And businesses need to do this sometimes to
3 move forward, get on to running and managing their
4 businesses.

5 Just like dairy farmers, we need to come together
6 with our fellow dairy farmers, move on, and go forward.
7 And visiting with fellow dairy farmers in my community
8 and customers and friends, you know, we are all feeling
9 that this needs to come to an end, move on, move
10 forward, turn over a new leaf, and continue forward.
11 And that also helps the relationship that we can have
12 with all our other dairy farmers and all our other
13 farmer families.

14 I'd like to show you that from our farm, and other
15 agribusinesses that we run, and fellow friends, dairy
16 farmers, and other things, our feelings are reflective,
17 as a member of this class, to go forward as a settlement
18 with this lawsuit. Compromise made here would be a good
19 thing. We need to allow our friends, our families,
20 other dairy farmers to move forward and get back to do
21 what they do best, running their business, to provide
22 the public with a great nutritional product called milk.

23 Thank you for your time.

24 THE COURT: Thank you.

25 Anybody else who would like to speak?

1 PAUL BOURBEAU: Good afternoon. I'm Paul
2 Bourbeau, and I really appreciate the opportunity to be
3 able to speak -- that's spelled B-o-u-r-b-e-a-u -- from
4 St. Albans, Vermont, in Franklin County, not too far
5 away from the Canadian border.

6 I have a fairly unique experience to share with
7 you. I am going to give you a little bit of bio and
8 just to let you know that we have continued to go back
9 to the DMS system and have made the conscious decision
10 to stay with DMS.

11 I'm born and raised on a dairy farm. My father was
12 a director of St. Albans Co-op. When we purchased our
13 own farm in 1982, at the ripe old age of 23, looked
14 around and felt very comfortable with what St. Albans
15 Co-op was offering to many of our neighbors. And the
16 most competitive, successful farms in our area were
17 members of a co-op system. Even though there were
18 independents there and other places for us to ship our
19 milk, we decided to go with St. Albans Co-op.

20 We stayed with St. Albans Co-op, but then in
21 February of 2000, we had a barn fire. We lost all of
22 our milking facilities, lost about half the cows. Make
23 a long story short, within a couple of hours, the
24 decision had been made for us we were out of the dairy
25 business.

1 We spent all of the year 2000 doing some soul
2 searching, wondering if that was really the business we
3 wanted to be in. And the fact of the matter is I guess
4 it's something that gets into your blood, and we decided
5 we were going to build back.

6 We were offered that opportunity again, in the year
7 2001, when we built back, where are we going to ship our
8 milk. By that time, we had the DMS system up in place.
9 We looked at what cooperation and working together was
10 allowing producers to do by being part of a larger
11 organization, and we made the decision to go back to
12 St. Albans Co-op and be part of that DMS system.

13 Fast-forward to 2008, the end of 2008, we were
14 looking at a downturn in the economy. We were looking
15 at a rapid increase in the milk production, and there
16 were a lot of things that were pointing to a low milk
17 price in 2009. As it turns out, milk prices crashed
18 terribly in 2009, much worse than I would have ever
19 imagined.

20 My wife and I made the difficult decision -- now,
21 keep in mind, I have been a farmer since I was able to
22 put my boots on by myself. That's what I'd always,
23 always done, that's what I wanted to do, and that's what
24 we continued doing.

25 But still, at the end of 2008, we made the

1 difficult decision to put in a bid, which ended up being
2 accepted, to participate in the buyout program with CWT.
3 For one year, we didn't milk any cows. We sent a letter
4 to our vendors, to our friends, saying that this was
5 strictly a business decision, and it was breaking our
6 hearts, but we truly believed the only way to be in
7 business long term -- as crazy as it sounds, to stay in
8 the dairy business long term -- was to have no cows
9 short term.

10 A lot of farmers went out of business in 2009.
11 It's been estimated that farmers lost an average of a
12 thousand dollars per cow in 2009. I think we made the
13 right decision being out of business in 2009. Obviously
14 it wasn't a profitable year, but we -- it allowed us to
15 get back in.

16 So here we were at the end of 2009. We had
17 co-ops -- I had a co-op that was not part of the DMS
18 system wanted our milk really bad. I am going to be
19 very honest with you, the last name Bourbeau, being
20 three miles away from the St. Albans Co-op plant, there
21 was -- and also we're only a few minutes away from the
22 Canadian border -- opportunities to sell our milk to
23 independents, and maybe our milk would have been
24 exported; we still made the decision to go back to DMS
25 system. We shipped our milk to St. Albans Co-op.

1 A few years ago, we -- just three years ago, we
2 made the decision to switch to Dairylea. We looked at
3 what was happening at St. Albans Co-op, looked at
4 different expenditures that were going to have to be
5 made for St. Albans Co-op to stay in business, et
6 cetera. So without going into a whole lot of details,
7 we decided to switch to Dairylea. Common theme there,
8 though: We wanted to keep our milk in the DMS system.

9 Dairylea, as has been mentioned before, and you
10 have heard many times -- and I sincerely mean this. I
11 am very, very impressed. For five years all the
12 information has probably been duplicated, triplicated,
13 and so many times sent back to you, but still you're
14 listening, and I really appreciate it.

15 At the end of -- when Dairylea was no longer
16 Dairylea and became part of DFA, we had a choice again,
17 Bonnie and I. Are we going to go with DFA? We have a
18 choice here. We can go to another co-op. And we
19 decided to stay with DFA, again, to be part of that DMS
20 system.

21 Going back to my younger days, I was there when
22 St. Albans Co-op formed the Young Cooperators Program,
23 program for young farmers and members of farm families
24 to become part of an organization that's part of the
25 co-op in order to learn about our industry and see

1 what's happening. My wife and I were part of that
2 St. Albans Co-op Young Cooperators Program. We ended up
3 being national chair couple of the YCs. Of all the
4 thousands of members in the YCs, we became national
5 chair couple.

6 I only explain that to you because in our travels,
7 in meeting with the other representatives of different
8 regions of the YCs, we came back home with a much
9 greater appreciation of what we had been taking for
10 granted, how much competition there was for our milk and
11 the choices that we had to market our milk. Not
12 other -- not all other areas of the country had that
13 ability. So we came back home with a much greater
14 appreciation of something that we might have taken for
15 granted for a long time.

16 In 2009, when the price of milk collapsed and there
17 was a lot of angst in the industry, I had been
18 involved -- as I said, starting with the YCs, I had been
19 involved for many, many years -- with the support of my
20 wife and my family, really paid attention to dairy
21 policy. Senator Leahy, Congressman Welch nominated me
22 to serve on the newly formed dairy industry advisory
23 committee that Secretary Vilsack put together, an
24 emergency committee, two-year term, to look at new dairy
25 policy and what could we set up.

1 There were a few dairy farmers on that board.
2 There were industry representatives. There were people
3 from academia; like I said, processors and purchasers;
4 consumer groups. So -- and government officials. This
5 was a very wide-ranging group of individuals with
6 different interests and different concerns when it
7 pertained to dairy. I had always looked at it just from
8 a dairy farmer. All of a sudden I was looking at it
9 from a completely different viewpoint.

10 Again, when we were looking at different ways to
11 come up with different programs to help dairy farmers,
12 one of the things that really stood out, one of the
13 programs -- and the government agencies came in and they
14 said to us, we're trying to figure out exactly what is
15 the market price for milk, what is the actual price for
16 milk in the United States. And there were three dots
17 around the country, three areas where you could go and
18 there was enough competition for producers' milk that
19 you could actually understand what the true price was,
20 the true clearing price. And one of those dots was
21 almost right over our farm up here in the Northeast.

22 So, again, I came back from that two years,
23 traveling to Washington, D.C., close to every three
24 weeks, with an even deeper appreciation. Again, here is
25 a government agency, the national government, is saying

1 my area of the country, where I am in Franklin County,
2 Vermont, that's one of the areas they believe is the
3 truest competition and a lot of competition for my milk
4 where I have enough different choices.

5 So given all of that backdrop --

6 THE COURT: How much of that --

7 PAUL BOURBEAU: Go ahead.

8 THE COURT: How much of that do you think is
9 because of the brand of Vermont milk, and the people,
10 for example, Ben & Jerry's, and we have a lot of cheese
11 producers who want to say, I'm getting my milk from
12 Vermont?

13 PAUL BOURBEAU: Very, very honest -- excellent
14 question. Excellent question. But for individual
15 brands, like the Ben & Jerry's, that does make a
16 difference where the milk is coming from. What they
17 were looking at, at that level, the USDA, of how many
18 people were looking to buy our milk, and very little of
19 it had to do with just the fact that it was from
20 Vermont. We had the whole federal order. And the
21 federal order had a lot more to do than just Vermont.
22 But excellent question.

23 But -- so I just give you that background just to
24 show you how many different organizations that was
25 involved in, and we still kept coming back -- even with

1 all that knowledge, kept coming back to the DMS system.

2 Why am I in favor of this agreement being accepted
3 and this lawsuit being settled? I am going to be
4 perfectly honest with you. The first thing that comes
5 to me is the stubborn Frenchman in me wants to fight
6 this right to the very end and prove we don't owe a
7 penny. We didn't do anything wrong.

8 I have been a school board member for 30 years,
9 been lead negotiator for almost 25 years serving four
10 different school districts and a high school, lead
11 negotiator with -- for four schools right now, with
12 currently two associations support -- union -- support
13 staff union and a professional staff.

14 Over and over and over, the only way you come to
15 agreement is by compromise. And there are times when we
16 have had to do things that we didn't really feel
17 comfortable with, but we knew that the best way to move
18 forward and what was the best for the children was to
19 accept an agreement that we didn't really feel
20 comfortable with.

21 I can't say that I truly feel comfortable with the
22 50 million. I don't know that I really feel comfortable
23 with saying, Yes, we will do this. We will pay this,
24 because, for me, there's a small part of me that says,
25 Well, even though we are saying we didn't do anything

1 wrong, there's a small part that's admitting guilt. But
2 that's not the way I am viewing this agreement and why I
3 think it's time to settle.

4 This is casting such a long shadow over not only
5 DFA and DMS and St. Albans Co-op, formerly Dairylea,
6 it's all over this -- our industry. It's all over all
7 the producers. We have got this lawsuit. We are such a
8 minority. It was mentioned before only 46,000 dairy
9 farmers left in the United States. Look at how few are
10 left here in the Northeast. We need to work together.
11 We need to build coalitions. We need to work with other
12 organizations.

13 I think having this lawsuit here, not knowing where
14 it's going to go, not knowing how many years this is
15 going to last, is really hampering our efforts in this
16 outreach program to get others to work with us as we
17 look forward to having a brighter future for us as dairy
18 farmers. So this isn't just a DFA or DMS thing. It's
19 for all farmers and the uncertainty of where this
20 lawsuit could bring us.

21 So, in closing, I thank you very much. I am really
22 biting my tongue, resisting the urge to retry this case.
23 There's things that I have heard today that I definitely
24 don't agree with, but I think the point of today is what
25 do we feel about this agreement, and I strongly,

1 strongly believe that it's in the best interests of all
2 producers to -- to get this over with and move forward
3 with this.

4 And even though in my letter I said I did not know
5 all the intimate details -- I haven't been in court
6 every single session -- I've paid very close attention.
7 I didn't end up on a DIAC committee, I didn't end up
8 chair of the national YCs by not paying attention to
9 what is going on. I have a fairly good knowledge of
10 what was going to occur, what has occurred, what's been
11 alleged, and I still believe that this is the right way
12 to go.

13 And there's a saying that I have used in the past,
14 and I will use it again. There comes a point in time --
15 there comes a point in time when you are sitting here
16 wrestling over something and trying to win, the best way
17 out for you to win that tug-of-war is just to go to your
18 end of the rope and call it a day.

19 THE COURT: Thank you.

20 PAUL BOURBEAU: Thank you very much.

21 THE COURT: Anybody else who would like to
22 speak?

23 Yes.

24 REG CHAPUT: Thank you, your Honor. My name
25 is Reg Chaput, C-h-a-p-u-t. And I will try to be as

1 brief as I can possibly be.

2 So I farm in partnership with my brother Michael up
3 in North Troy, Vermont. The name of the farm is Chaput
4 Family Farms, and we milk a thousand cows at 2500 acres,
5 and we employ 22 people.

6 I have been fortunate enough to have been born and
7 raised on the farm. I'm 57 years old, so I guess that
8 makes me the average dairy farmer, from what I hear.
9 And other than a four-year stint in the Army, all my
10 time has been spent on farms.

11 The last 35 years on my own, I have had the
12 opportunity of being in three different co-ops and two
13 independent handlers, so I have got a real good flavor
14 of what options are available out there to market your
15 milk.

16 And I am not a cynical person by nature, but I am a
17 cautious person, so I -- it was important to me, when I
18 got involved with Dairylea in 1997, to start becoming
19 really involved with the co-op. So I have attended a
20 lot of meetings, been on a lot of the committees.

21 And though I don't -- and I think I am the type of
22 person that I like to ask the tough questions and hold
23 people accountable, and I can say in all that time that
24 I don't feel that there has been any reason to suspect
25 that there has been any type of, you know, agreement to

1 harm in any way. I think they're always trying to make
2 the best decisions in -- for all the co-op, even though
3 I may not agree with everything that they say or agree
4 to. I step back from that, I realize; a lot of times
5 it's simply because it didn't impact me the way I wanted
6 it to.

7 But I really think it's important to start moving
8 away -- to settle this because it's been a real
9 distraction for the co-op leadership, and it's taken
10 them time away from, you know, putting programs in place
11 that could help dairy farmers from searching for other
12 milk marketing opportunities. And so I really feel that
13 it's time to just put this to rest. And so that's all I
14 have to say.

15 And thank you for your time.

16 THE COURT: Thank you.

17 Anybody else?

18 Yes, sir.

19 BILL ROWELL: My name is Bill Rowell,
20 R-o-w-e-l-l. My brother and I milk 950 cows in Franklin
21 County, Vermont. We produce 25 million pounds of milk a
22 year. We are members of the St. Albans Dairy Co-op,
23 which is part of the DMS system.

24 If you look at our dairy production ending 2014,
25 you will see the United States produced 205.9 billion

1 pounds of milk. If you look at our export market of
2 last year, you will see that we were exporting
3 17 percent of that annual production. Today, that
4 export market is down around 13, perhaps down as low as
5 12 percent presently. That additional milk has to go
6 somewhere.

7 I'm not a milk marketer. DMS has done a good job
8 marketing milk, finding a home for it, for the best
9 possible price under volatile market conditions. Food
10 processors are notorious, like any other consumer, of
11 trying to find the best possible price. Milk is the
12 chief input for any dairy processor. They are going to
13 buy it just as cheap as they can get it time and time
14 again.

15 We worked for seven and a half years to change
16 national dairy policy. That was a long road. We went
17 to Washington many times, many, many times, traveled
18 across the country many times, trying to get farmers to
19 work together. That's a difficult project. It's --
20 probably herding chickens would be easier.

21 We did get a safety net that the farmer can buy
22 into. We did not get a management tool. So now when
23 there's an oversupply of milk, which we're presently
24 facing -- because feed is cheap, everybody's producing
25 milk, grain is plentiful worldwide, and everybody in the

1 world is producing all the milk they can -- the market
2 will finally get to the point where it can't absorb all
3 of the milk. Who is going to market it?

4 And in the Northeast, we lack -- particularly in
5 Vermont, we lack adequate infrastructure. In other
6 words, we don't have an overabundance of processors. So
7 who is going to market your milk under those conditions?

8 DFA built a plant in Nevada, last year or two, for,
9 I think, around a hundred million dollars, and they are
10 taking excess milk and making powder for export, trying
11 to find a home at the best possible price for the milk
12 in this country.

13 I'm apprehensive anytime that I do business with
14 someone. You always question, is it the best deal? Is
15 the integrity there? How do I do better? And I will
16 tell you this: From my perspective, for the amount of
17 milk that we are making, I would hate to have to market
18 it, and I doubt that I could do better than what DMS is
19 doing for us.

20 So I will stand with them, and I would like to see
21 the lawsuit concluded because this lawsuit is casting an
22 image over the entire industry.

23 Now, on our farm over the last six and a half
24 years, we have had better than 20,000 people from 27
25 countries tour the farm. And we often get comments

1 about the image of the dairy farmer and/or the dairy
2 industry. It -- it brings into question the integrity,
3 and doing so brings into question the quality of the
4 product and into question animal care. And if we go
5 down that road and stay in that rut for too long, you
6 are really painting us with a kind of a dark brush.

7 I'd appreciate seeing this settlement, and I'd like
8 to get moving forward on a more positive path.

9 Thank you, your Honor.

10 THE COURT: All right. Thank you.

11 Anybody else who wants to speak?

12 Yes.

13 MICHAEL SWANTAK: Hello. Michael Swantak,
14 S-w-a-n-t-a-k.

15 I just want to read a brief definition of
16 Capper-Volstead. February 18th, 1922.

17 "The Capper-Volstead Act from 1922 allows
18 agricultural producers to form associations that allow
19 producers to compete together in the marketplace."

20 I guess I should say I am not in favor of going
21 through with this settlement for a lot of reasons, but I
22 am just going to keep this brief. And if you look at
23 what DMS and DFA have done so far, after what I just
24 read, you would say no, they probably haven't broken any
25 laws. Let me read further.

1 The act states that "persons engaged in the
2 production of agricultural products as farmers,
3 planters, ranchmen, dairymen, nut or fruit growers may
4 act together in associations, corporate or otherwise,
5 with or without capital staff, and collectively
6 processing, preparing for market, handling and marketing
7 in interstate and foreign commerce, such products of
8 persons so engaged. Such associations may have
9 marketing agencies in common, and such associations and
10 their members may make the necessary contacts and
11 agreements to effect such purposes."

12 Still, it's up to you if they have broken that law.

13 Now, there's one more little piece: "Provided,
14 however, that such associations are operated for the
15 mutual benefit of the members." And that right there, I
16 have to say, yes, that's clear as it can be, but I think
17 the books need to be open there and just do a little
18 more digging into how they operate compared to what this
19 piece of paper says.

20 And that's all I have.

21 THE COURT: Thank you.

22 MICHAEL SWANTAK: You want this?

23 THE COURT: If you give it to Jen, she will
24 make sure that I get it, so you can come forward.

25 Thank you.

1 MICHAEL SWANTAK: Thank you.

2 THE COURT: Anybody else who wants to speak?

3 All right. I have some questions for the
4 attorneys, and we are going to hear from them.

5 I have, obviously, read your papers. And I have a
6 couple subject matters, in particular, that I am
7 interested in your thoughts on.

8 When this came before the Court for preliminary
9 approval and it became clear to me that there was a
10 division between class counsel and class
11 representatives, I had a lot of questions for you about
12 what happens, how does the settlement occur without
13 authorization, can you settle over the class
14 representatives' objections, and you both provided legal
15 briefing on that.

16 But this is not at all the typical case. I have
17 had settlement of class action suits, obviously, before,
18 and I am interested in your thoughts about what happens
19 when the division is this marked and the class
20 representatives are themselves fiduciaries and take a
21 very different view of the value of the settlement.

22 The release: I have a problem with the release.
23 As a fiduciary to the class and having the
24 responsibility under the law to look out for their
25 interest, I just see this release as incredibly broad,

1 and it would even involve -- if the milk check was wrong
2 and you could prove it, that would be extinguished. It
3 includes a release of all of DFA and DMS's members.

4 I would have a hard time -- I couldn't discern who
5 all is covered because I don't know who they have an
6 ownership interest in or who's their affiliates. And
7 it's a lengthy period of time, and it just is not a
8 release that says all the claims that have been brought
9 in this lawsuit or could have been brought in this
10 lawsuit. It's far vaster than that. And I just don't
11 see how it squares off with the monetary settlement.

12 So I am very concerned about the release, and I
13 hadn't actually focused on the definition of the
14 complaint, so I am thankful for Mr. Haar for referencing
15 me back to the prelude to the settlement agreement that
16 defines the complaint to include any pleading filed in
17 this case. And how does that affect the release? Are
18 we really talking about any mention of any matter in any
19 of the papers filed in this court would be covered by
20 the release? That would be astonishingly broad.

21 So I have a problem with the release, and sometimes
22 those problems can be fixed and sometimes they cannot.

23 Injunctive relief: In ultimately granting
24 preliminary approval, I made the comment that the relief
25 in the settlement agreement is broader than what would

1 be ordered by the Court after a trial, and I only meant
2 that at this point the injunctive relief claims have
3 been narrowed to an injunction for anything either the
4 Court or the jury finds unlawful. And you really don't
5 need an injunction to enjoin unlawful conduct. It's
6 unlawful.

7 So that isn't really a lot of injunctive relief.
8 If a jury finds conduct is unlawful and somebody engages
9 it in -- the next day, they have got a problem with or
10 without a court injunction. So I saw this as different
11 in kind as to what would happen at the end of the day.

12 But I am very concerned about the class
13 representatives' careful reading of the injunctive
14 relief and their representations that either they
15 already do it, this is already on the website, this
16 doesn't provide us with any benefit. So that is
17 concerning.

18 I have been, obviously, your judge from the
19 beginning, and we have had many pointed discussions
20 about what is this case about. And truthfully, this is
21 the first time I am hearing about the control of the
22 testing and how test results may or may not be
23 manipulated to produce certain results and cause
24 retaliation, and what happens if you terminate your
25 agreement but you have no place to go with your milk.

1 And certainly some of those points are raised, but
2 one of the challenges in presiding over this case is the
3 plaintiffs' kind of ever-evolving conspiracy, two
4 layers -- first it was this act or that act -- and me
5 trying to kind of corral it into something that was
6 manageable, and explaining to plaintiffs' counsel, you
7 know, you should be concerned if I don't understand your
8 theory of the case, that should be very concerning to
9 you, and having that conversation.

10 I just -- you know, one of the things that was
11 brought up in the summary judgment motion and other
12 times is this nonsolicitation agreement and co-ops
13 should not be discouraging other co-ops from soliciting
14 their members and there shouldn't be any spoken
15 agreements, and you know that in Silicon Valley that was
16 the focus of Judge Koh's decision and her rejecting
17 approval of the settlement, and there was very strong
18 proof in that case.

19 In this case, there has been strong proof, but I
20 remember Mr. Kuney directing my attention to: Let's
21 say, for the sake of argument, that happened. How does
22 it translate into damages? How does it result in money?
23 And I just didn't feel like the plaintiffs' expert could
24 answer that question. It was somehow included in there.

25 So I am concerned about when I am assessing the

1 likelihood of success on the merits and how this would
2 do at trial, that the class representatives have one
3 case in mind, and I was presented with a different and
4 much more wide-ranging and unwieldy case than they have
5 talked about today. And how do I do that in evaluating
6 what would have happened in trial and what are the
7 likely ranges of recovery?

8 When the parties came to me and said, you know, we
9 won't want any further opt-outs, I looked at the case
10 law, and I said, yeah, this is -- we're pretty far along
11 in the lawsuit. People have already had an opportunity
12 to jump in and out of the class, and at this point
13 there's no reason to let anybody opt out anymore. We
14 have been here for years, and if they wanted to get out,
15 we had opportunities to do that.

16 It gives me pause when I see a release of this
17 magnitude and breadth to adhere to that position, to
18 say, you know what, you are in it, and you are going to
19 be releasing these claims, and you are going to have
20 this very expansive release because you didn't get out
21 when it was -- when the opportunity was there. So I am
22 worried about that opt-out provision not being here in
23 the settlement.

24 I am interested in your thoughts, which some of the
25 parties -- or some of the speakers said, you know, we'd

1 be better off going to trial and losing because at least
2 we wouldn't be giving up anything by way of the release.
3 And in speaking to these issues, I am mindful of the
4 people who spoke in favor of the settlement, and it's
5 understood that settlements are the preferred way of
6 resolving lawsuits, if it can be done fairly,
7 reasonably, and adequately. There's lots of case law on
8 that.

9 So I understand that's the backdrop, and we are not
10 really talking about are settlements, in general, a good
11 thing, but is this settlement a good thing. And in
12 deciding this case, it's different because the
13 challenges are not just the money's not enough, the
14 injunctive relief is not broad enough, but many
15 arguments that, "I wanted this case to go to trial and
16 wanted the facts to be portrayed in front of a jury. I
17 wanted this exposure, and that's why I was in it." And
18 I haven't seen too many cases talking about that
19 particular factor.

20 So in analyzing the fair, reasonable, and adequacy
21 of the settlement, the courts don't talk about, but did
22 the plaintiffs really want to go to trial and have their
23 day in court, and did that get taken away from them.
24 But that's a theme here, so I am interested in how you
25 think I should be addressing that.

1 My comments are not intended to foreclose any of
2 your own. Those are just some of the things that I am
3 thinking about. And I am going to start with plaintiff
4 for their arguments in favor of approving the
5 settlement.

6 MR. PIERSON: Thank you, your Honor.

7 Your Honor, Kit Pierson for the DFA, DMS subclass.

8 Your Honor, this case, was started five years and
9 three months ago. I think you had only recently come on
10 to the federal bench. It's been obvious from the outset
11 that the case evoked strong opinions and strong
12 emotions. It evoked strong emotions and opinions by
13 caring, serious people and, frankly, by people on both
14 sides of the case.

15 Our job as counsel, your Honor, and as counsel for
16 the DFA, DMS subclass, has been to look at the facts,
17 look at the law, look at the probabilities and the
18 prospects in an objective way, in a dispassionate way,
19 in a sober way. That is not always an easy job in this
20 context. It involves telling people things that they
21 may not want to hear and making hard calls.

22 And what I'd like to do -- and I will try to answer
23 the Court's specific questions in the context of this --
24 is really walk through with you the Grinnell factors and
25 the thinking that led to our analysis of this

1 settlement, your Honor. And I would start -- I would
2 start with two overriding principles that I think are
3 significant.

4 Number one is the notion, which your Honor
5 reflected in the Dean settlement, and it's clear from
6 the Second Circuit law, that there is a strong public
7 policy in favor of settlement, and that's sort of --
8 that's a starting point. It's not dispositive. It's a
9 starting point.

10 The second starting point that I think is
11 particularly applicable here is that there is a strong
12 presumption in favor of the fairness, adequacy, and
13 reasonableness of the settlement when three conditions
14 are present.

15 When the settlement is the result of arm's-length
16 negotiations, that's the first condition. That is
17 clearly the case here. These parties wrestled with each
18 other for five years. They were as -- the Court -- as
19 we explained to the Court, there were sort of
20 false-start settlement discussions over that period, but
21 no one was quick to settle this case, your Honor. This
22 was the epitome of arm's-length negotiations.

23 The second factor in applying the strong
24 presumption is the stage of the case. Was there full
25 discovery so that people had an opportunity to evaluate

1 the situation?

2 THE COURT: So let me stop you on "arm's
3 length" because the argument that I am hearing is, yes,
4 until the money's on the table -- and the plaintiffs'
5 counsel is asking for \$16.6 million -- that's when the
6 arm's length disappeared. And the word "collusion" has
7 been used today. I might define it differently than
8 that. So I don't think at this point that that's
9 uncontested.

10 MR. PIERSON: Your Honor, it may be contested,
11 but it is not accurate. You know, this case was hard
12 fought for five years, and I have been fighting cases
13 hard for 30 years from clients ranging from people in
14 Guantanamo to Microsoft and everyone in between, and
15 this case was no different in that respect, your Honor.

16 What happened in this case, and the reason there
17 was a settlement, is not unlike a number of other cases
18 that all the experienced counsel in this case have been
19 involved in. You know, we did not have what we regarded
20 as a serious settlement offer, ever, or a settlement
21 offer that we were prepared to accept or recommend to
22 the Court, until we got to the eve of trial, which DFA,
23 DMS looked at their risk and their position changed
24 dramatically. It happened, frankly, the Friday before
25 the final pretrial conference, which is why we wanted to

1 notify the Court right away.

2 And after that -- after that was really initiated
3 by DFA, DMS, you know, there were a series of lengthy,
4 lengthy phone calls with each of these subclass
5 representatives. Now, they are free to disagree on the
6 merits of that, but there is not the slightest question
7 in my mind and Mr. Abrams', who is very involved and can
8 explain himself. You know, this was hard fought, arm's
9 length, you know, in the very essence of that.

10 And I will also tell you, your Honor, that a fee
11 calculation was not a factor in my mind. It was never a
12 factor in my mind. It's never been a factor in my mind.
13 The Court will decide the appropriateness of the fee in
14 this case. That's within the Court's discretion. But I
15 make a decision in this case and other cases about
16 whether to settle without that as a consideration. And
17 that was -- and that was what was done here. So that
18 factor is present here, your Honor.

19 The second factor was there a full discovery, you
20 know, what we're really trying to get at there is has
21 counsel -- have you been at this long enough that -- and
22 have you had judicial rulings that gives you an
23 opportunity to assess the pros and the cons and the
24 risks, et cetera.

25 Your Honor ruled that that standard was met in

1 connection with the Dean settlement. We're years past
2 the Dean settlement with a fuller discovery record, with
3 comprehensive judicial opinions on some of the key
4 issues in the case, and I am going to talk to you about
5 those and the significance of those to our calculation.

6 But -- but, you know, you know, both the Court and
7 our eyes were wide open in connection with this. I
8 mean, it would be hard to find a case -- there are five
9 million pages of documents produced in this case, your
10 Honor. It would be hard to find a case where that was
11 more easily satisfied.

12 The third criteria for the strong presumption is
13 whether experienced counsel were involved. And,
14 your Honor, this is a point that I want to emphasize
15 because there were really five law firms involved in
16 this, and they're law firms -- these are not law firms
17 that are quick to settle cases. Exactly the opposite.

18 Mr. Abrams, you know, is one of the finest lawyers
19 in the country, as is -- frankly, as is Mr. Kuney. Very
20 experienced trial counsel. His reputation is he takes
21 cases to trial. He is a member of the American College
22 of Trial lawyers. He is a lawyer that knows when to
23 take a case to trial and not.

24 The same is true of our firm, your Honor. We have
25 taken -- I personally have taken a class action case to

1 verdict in the last two years. Our firm has -- and I
2 supervise the antitrust group. I am the co-lead of
3 at --

4 THE COURT: So -- but let me ask you. I
5 haven't seen the courts analyze whether a particular
6 attorney's the type to take it to trial or not take it
7 to trial. And I view the Dean settlement very
8 differently in that at that point Dean said, Here's some
9 money. We don't want to be involved, and we -- you
10 know, we aren't going to participate, and we are going
11 to have -- we are going to pay enough to get out of it
12 early.

13 And after the injunctive relief was dealt with,
14 there really wasn't any opposition, that I was told
15 about, to that settlement. So I don't think it's a
16 question of will you take it to trial or not.

17 MR. PIERSON: The question, your Honor, is
18 whether -- is whether you can have confidence in the
19 settlement because the judgment was made by experienced
20 counsel. That's the question. Was this made by
21 experienced counsel, or was it made by a bunch of
22 novices?

23 And the point I am making, your Honor, is that,
24 viewed from a variety of perspectives, you have, you
25 know, attorneys with a proven willingness to take cases

1 to trial. You have attorneys that have litigated in the
2 Southeast for seven years, and Mr. Abrams can tell you
3 everything you need to know about the differences
4 between that case and this case, not the least of which
5 was the statute of limitations.

6 You have two very fine law firms in Vermont, and
7 you have David Balto, who has been in a senior position
8 at the FTC, and my partner, Ben Brown, who was in the
9 Department of Justice's antitrust division. So you have
10 lawyers that have been on the defense side of cases, on
11 the plaintiffs' side of cases. I have tried cases on
12 the defense side. I have tried cases on the plaintiffs'
13 side.

14 You have lawyers looking at this from a variety of
15 perspectives, and those lawyers unanimously concluded
16 that this was in the best interests of the settlement.
17 And that's -- so I am not saying that the presumption is
18 irrebuttable. What I am saying is that the Second
19 Circuit and this Court recognized in its earlier
20 opinion, I think citing one of those cases, that there
21 is a strong presumption when those conditions are met,
22 and they are clearly met here.

23 THE COURT: So let me ask you about that
24 because I started off by saying this is unusual in that
25 I haven't had a settlement of a class action where class

1 representatives who know a lot about the case -- they
2 know a lot about the case. They are not people who have
3 been kind of floating in and out and are on the caption
4 and don't know what the case is about, and they don't
5 share that level of confidence that you have, and that's
6 unusual, and what do I do about it?

7 So usually when I'm analyzing are counsel
8 experienced and otherwise competent and professional, I
9 am talking about what I see, and I have already found
10 that you are all capable of litigating this case. But
11 we got a division here that doesn't exist in the
12 ordinary case. And I assumed that your research was
13 exhaustive when I asked you about it. Doesn't seem like
14 it's come up a lot in other cases.

15 MR. PIERSON: Your Honor, there are numerous
16 cases in the Second Circuit and elsewhere in which class
17 representatives, sometimes unanimously -- which is not
18 the case here; you basically have three farms opposed,
19 one farm in favor -- but you have cases in the Second
20 Circuit and elsewhere where there is unanimous
21 opposition. And courts say that, you know, counsel has
22 to make an independent judgment of the situation.

23 In all frankness, your Honor, I will tell you one
24 of the reasons that's true here is because the case
25 provokes such strong reactions because it involves

1 people's livelihood, and we understand that; that
2 some -- that there are some facts and -- or there are
3 some myths about the industry that just become
4 unchangeable in some people's minds.

5 And I will give you an example of that. It was
6 alleged earlier today that Dean has 70 to 90 percent
7 market control in the Northeast. Your Honor, there is
8 no evidence in the record -- not only is there no
9 evidence in the record supporting that conclusion, it's
10 simply not right. It's simply incorrect.

11 Now, if I, as a subclass representative, believe
12 that there was 90 percent ownership by Dean here or 70
13 percent ownership, the case would be a very different
14 case, fundamentally different case, than the one you
15 have in front of you. And, you know, it's a point that
16 we have made, you know, over and over that it's -- you
17 know, you -- it's not a mysterious -- certainly it was
18 in our interest and in Dr. Rau- -- you know, it would
19 have made sense for Dr. Rausser, if that face was even
20 close to correct, we would have claimed it. It wasn't
21 in our interest to downplay the market share.

22 But you can go to the plants, you can see their
23 capacity, and both experts agreed on that. And that's
24 why at the end of the day, your Honor, and I -- look, I
25 have the utmost respect for the integrity and the

1 motives of the subclass representatives. You know, they
2 have done the job we have asked them to do, and I
3 applaud them for that. But at the end of the day, you
4 know, there's a factual record here, and there's law,
5 and it has to be taken seriously, and it has to
6 inform -- it has to inform judgments.

7 And I will talk about that in a moment when I go to
8 risk, but an example of that is, you know, your -- the
9 Court has expressed some very serious concern in
10 these -- in this case about substantive issues. And the
11 Court's made rulings that have legal consequences for
12 trial and for the risk to class members, and they have
13 to be taken into account. And that's our job as
14 lawyers: Even when people who care passionately about
15 this and who we like, you know, wish those facts don't
16 exist, we have to take that into account.

17 So let me turn to the 7 -- to the Grinnell factors,
18 and I will try to do it in a relatively succinct way.
19 The first factor is the complexity and expense and
20 duration of the litigation. You know, I think that
21 factor is pretty -- it's pretty self-evident. I have
22 been doing this 30 years. It's about as complex a case
23 as it gets, and there --

24 THE COURT: Well, let me ask about that
25 because I am not convinced it had to be that complex,

1 and I was interested in member of the public's
2 perception of my perception, and I hadn't read this
3 newspaper article, about what to do with your summary
4 judgment motion in opposition.

5 And it was such an overload of information and
6 document dump that it would have been impossible for me
7 to discuss each and every thing that was in that case.
8 It would have been a year-long writing exercise. And so
9 I started looking at documents that I thought did not
10 match up with what you were telling me they said.

11 So you would say, This, you know, reflects their
12 agreement to conspire. I'd look at the document; I'd
13 say, This doesn't say anything of the sort. I don't
14 understand where it is.

15 So I'm not so sure that the complexity was built
16 into the case or it evolved. And if you will remember,
17 we started out with one aspect of milk price, and I was
18 like, That doesn't seem right to me. I am not a milk
19 expert.

20 Yeah, you are right; it's not right. Here's a
21 new mix. That doesn't seem right to me because really
22 what you are looking at is that uniformity that's part
23 of regulation.

24 Yeah, you're right, that's not -- and I told you
25 that's not a good thing. That gives me a lot less

1 confidence because I can't -- I don't want to be
2 second-guessing a national expert in economics about his
3 theories. And I kind of felt I was in that position
4 frequently. So I am not convinced that the complexity
5 was inherent in the case as opposed to -- and may be an
6 effective litigation strategy because it certainly made
7 the defendants do a lot of work.

8 MR. PIERSON: Your Honor, let me make a couple
9 comments about that, and it's a dialogue we have had
10 before. One is, I can assure you if there was a single
11 document that sort of laid this all out and made the
12 simple case like some price-fixing cases that we're
13 involved in, I believe in litigating a case in a simple
14 fashion if, in fact, the evidence will allow you to do
15 that, if there is a single thing to point to.

16 So, for example, you know, you heard reference
17 today to milk testing or concern about milk testing.
18 Your Honor, there were -- and Mr. Abrams can comment
19 about the record in the Southeast, but, you know, we
20 got voluminous discovery in this case, and there were 70
21 depositions in this case and probably another 50 in the
22 Southeast or 70 in the Southeast.

23 You know, if there had been -- putting aside
24 isolated, anecdotal and largely unproven assertions
25 about that, but limited assertions about that, if the

1 evidence was there, your Honor -- you know, the critique
2 your Honor has raised is that -- is that we threw too --
3 in too many things, not that we didn't, you know,
4 include things we should have included in. If the
5 record had supported that, you know, we would have made
6 that claim.

7 But with extensive discovery in this case, you
8 know, it was, at best, a highly tangential issue in the
9 case. That's the reality. And as an officer of the
10 court, you know, I am not going to try to create
11 evidence that doesn't exist, that --

12 You know, but the point the Court raises was a
13 concern for us because we looked at the evidence --
14 there's no single document that sort of lays this thing
15 out, and we explained the evidence as fulsomely as we
16 could. You know, here's our best evidence. Here is all
17 our best evidence. And the Court expressed concerns
18 about it.

19 And obviously, we have to make an independent
20 judgment about that. And I remember one colloquy you
21 had with me, your Honor, is, you know, the jury's not
22 going to be able to understand this. It's hard to
23 explain it. I remember you commenting it was hard to
24 explain to the law clerk. And, you know, I took those
25 comments really seriously. You and I have had very

1 intelligent, I think, dialogues over the last five
2 years.

3 And when we present what we have found as the best
4 evidence in this voluminous record, and the Court says,
5 "It's confusing. It's too far reaching. I don't see.
6 It, I think -- I don't see the inferences you are
7 drawing from those documents," your Honor, I can agree
8 or disagree with that, but I am certainly going to
9 factor it in to the analysis of how a jury's likely to
10 react to this.

11 And we did, your Honor. We took your comments and
12 concerns very seriously. And if there was a simpler way
13 to present this case, if there was a single smoking gun
14 as opposed to sort of a broad conspiracy that involved
15 lots of actors that had to be brought into it, we would
16 have presented the simpler case.

17 But, your Honor, as much as, you know, particular
18 plaintiffs may wish the evidence was like this, or there
19 may be a lore in the Northeast that it's like this,
20 we've got to go where the facts -- where the facts and
21 the record led us, and that's what we evaluated it. And
22 we evaluated it with your Court -- with the Court's
23 concerns in minds.

24 The only other point I'd make about complexity,
25 because it's raised by the Court's comments, there are a

1 couple aspects of this record that really do make it
2 more complex even than -- I mean, I basically have been
3 doing really complex antitrust cases my whole career.
4 One thing that is unusual about this case, the
5 regulatory structure is unusual. The market definitions
6 are harder in this case, frankly, I think, than in a lot
7 of cases.

8 But the odd thing about this case is even
9 determining the price, which is an issue you reference,
10 you know, and where is it, what's it -- you know, even
11 when we sort of -- when everyone sort of got on board
12 with the notion that it was over-order premium, then we
13 had big fights with Rausser about whether he was
14 measuring it properly and there was the location
15 differential with Boston.

16 So it's not a case -- and I don't want to belabor
17 the point because it was only one of many factors, but
18 it's a really complex case.

19 The reaction of the class. Your Honor, I think
20 this is -- this is significant, and I think it does
21 counsel in favor of the settlement. You have heard very
22 impassioned and prepared and well-meaning statements by
23 several class representatives. The fact is that 8,859
24 class members were notified about -- about the
25 settlement, and they were notified in a way that was

1 approved by the Court. They received -- received the
2 Court's opinion. They received direct mail notice.

3 And this is a case that, you know, people pay
4 attention to. These are generally people that have
5 filed claims before under the Dean settlement. People
6 pay attention to this case. This is real money. This
7 is not a coupon. It's not \$25 checks. It's thousands
8 of dollars to people who -- you know, it matters.

9 And, you know, I respect anyone that objected to
10 the settlement, but the reality is that of those 8,850
11 people that got notified, you know, there were 10
12 objections by people that don't understand because they
13 are outside of Order 1, and that's a ruling the Court's
14 already made, was a correct ruling, and that left --
15 that left the three subclass representative farms and
16 their various members who objected, and it left 14 other
17 objections.

18 And, you know, we have commented on some of the
19 deficiencies in those objections. Some were untimely.
20 But I don't really care about that. Let's just take the
21 number at face value.

22 THE COURT: So let's talk about that because,
23 as my judicial colleagues and I are grappling with class
24 action suits, and I have heard people say at conferences
25 they ought to be abolished because it's just not

1 achieving the benefit that was intended, silence of the
2 class is increasingly less used as that means everybody
3 thinks it's great.

4 And one of the things I was thinking about over the
5 lunch hour is, if you have a Pella window settlement,
6 and you don't get what you want for your defective Pella
7 window -- I have to go look at the case again, but I
8 can't remember the facts -- what's going to happen to
9 you? You are going to -- you don't get your -- your
10 window fixed. You don't buy windows there anymore.

11 And the point here is, "These people control our
12 livelihood. They have our milk checks in their hands,
13 and they have the future of our ability to find a place
14 to sell our milk." And you need to factor that in and
15 the amount of courage it would take to get up here and
16 talk about -- people use the phrase "complain about your
17 boss to your boss."

18 So I don't think that courts are saying, with
19 routine, like they may have previously, there's 5,000
20 people in the class and I haven't heard anybody in this
21 class action suit file an objection -- and I have had
22 those class actions -- and that must mean all 5,000
23 people are happy because you and I are getting class
24 action solicitations at home, and we're not answering
25 them either. So what about that?

1 MR. PIERSON: I think that's a fair
2 observation, your Honor, but I have a couple reactions
3 to it.

4 THE COURT: All right.

5 MR. PIERSON: So let's take, as a given, 99.8
6 percent, and I think that's basically the statistic.
7 99.8 percent of the people that were contacted about the
8 settlement with direct mail, with a court-approved
9 notice, in your opinion, did not object. And that
10 argument might have some force if only -- if it was only
11 the DFA, DMS members that were not objecting.

12 But here, about half of those people -- it may be
13 more than half of those people -- do not sell their milk
14 through DFA, DMS. So you have got thousands and
15 thousands of farmers who, at least as the class
16 representatives suggested, actually got a little less
17 relief out of equitable relief. So if anyone had a
18 right to complain or if anyone would be expected to
19 complain, it would be those thousands and thousands of
20 people.

21 THE COURT: So let me ask you about that. I
22 don't -- let's assume, for the sake of argument, I have
23 the benefit -- I don't have to work with DFA and DMS,
24 they are not doing anything to me, and you want to give
25 me money, and I am going to say yes. I am going to

1 release them. I haven't had any kind of relationship to
2 them, so I am not giving up anything.

3 How is that a factor that would make them more
4 likely to object?

5 MR. PIERSON: Because, your Honor, a part --
6 and Mr. Abrams can speak to this, but part of the whole
7 premise of this case has been that those farmers had
8 antitrust claims, and that, you know, under the
9 settlement they are releasing their claims, and they
10 have got to decide whether the benefits of the claim --
11 the benefits of the case financially and in terms of
12 equitably make it -- it's making sense for them to do
13 that. And, you know, what you know is that 99.8 percent
14 of the people that were informed of that, you know, had
15 no objection to it at all.

16 And there are two other points I would like to make
17 in connection with that. One is -- and this is
18 significant, your Honor. You know, this notice was not
19 only sent -- you know, this information has not only
20 been sent to the -- to the class members. It was also
21 sent to attorney generals in 10 states, including
22 Vermont; it was sent to the Department of Justice; it
23 was sent to the Attorney General for the District of
24 Columbia, none of whom have said that this is
25 unreasonable, that it's insufficient, that it's

1 wrong-handed. None of them.

2 And you may remember, in connection with the Dean
3 settlement, the Vermont AG -- and we talked to the
4 Vermont AG's office about the case frequently over the
5 years and about the settlement. You may recall that
6 they did come in, in connection with the Dean
7 settlement, and raise concerns about whether the money
8 was sufficient. None of those entities have raised
9 objections.

10 The other indicia you have here, your Honor, is --
11 you know, the fact of the matter is, even though the
12 deadline for submitting claims is not till the end of
13 May, you know, 600 farmers have already basically voted
14 with their feet by filing -- I think the number's 576 --
15 by filing claims. So you have got 576 people that are
16 already standing in line saying, I'd like the benefits
17 of the settlements, versus, you know, really, frankly, a
18 fairly *de minimis* -- I would say a *de minimis* level of
19 objections.

20 You know, give that factor whatever weight you want
21 to, your Honor, because I, frankly, think there are
22 other factors that may be more important, but I do think
23 that factor supports settlement here.

24 The third factor, the stage of proceedings, I don't
25 need to belabor it. We are obviously -- that factor is

1 obviously satisfied. We are late in the game here.

2 I do want to talk about the risk factors that went
3 into our analysis. And there were several and they are
4 significant.

5 THE COURT: Would you agree with Miss Haar
6 that there was really no risk that you would lose class
7 certification in the midst of trial?

8 MR. PIERSON: You know, your Honor, I wouldn't
9 say -- I wouldn't say that that is not a risk, in all
10 honesty, and there's a couple reasons for that, because
11 we are fighting that issue in basically every court in
12 the country, including the courts of appeals.

13 There were two risks, your Honor. Number one, DFA,
14 DMS had made it clear in their motions *in limine*, that
15 they were continuing to contest that, and, you know,
16 they -- as they have a right to, because the Court can
17 revisit the issue. And what was going to happen at
18 trial, I think, we all know, is that they were -- I
19 mean, I think they had listed 30 or 40 farmers as
20 witnesses, if not more. And they were going to get on
21 the stand and praise DFA and praise DMS, et cetera. And
22 they clearly were going to raise that issue again,
23 your Honor.

24 And the second point is that if we got a jury
25 verdict, there is not any -- there's zero question in my

1 mind that it would have been raised on appeal because,
2 you know, your original ruling -- you know, the Court's
3 struggled with it. The Court wrote two comprehensive
4 opinions, and I think pretty close issue in the Court's
5 mind was -- was my sense, maybe -- I am not trying to
6 read your mind, but it was an issue, and it was going to
7 be raised on appeal.

8 So I would not say it was the foremost risk we were
9 concerned about. It was a risk.

10 Here are the foremost risks that I would -- that I
11 would say we focused on. The first was one that
12 your Honor has raised, which is the statute of
13 limitations issue. And you have raised it at every
14 juncture of the case.

15 As you know, you know, farmers, for years, didn't
16 pursue these claims until -- you know, until we agreed,
17 really in 1990 -- end of 2009, I guess, when the case
18 was filed or -- when we -- or 2011, whenever it was, a
19 long time ago. You know, the conduct here goes back to
20 1998, and the concern that your Honor repeatedly
21 expressed was, you know, what about damages outside the
22 four-year limitations period?

23 And you expressed serious concerns about that from
24 two perspectives. You know, one, legally do you guys
25 get over the bar? And, two, even if legally you get

1 over the bar, I would say you expressed skepticism about
2 whether there really was a fraudulent concealment case
3 here. And you allowed us to go forward on that at
4 summary judgment, and we understood that.

5 But we also understood that your Honor had
6 commented that we bore a heavy burden on that issue,
7 that the jury was likely to be instructed that we bore
8 the burden on all those issues, and that your Honor had
9 expressed skepticism at various points about whether,
10 given this record, we could really get over that bar.

11 So I am not saying that was dispositive, but we
12 understand that for the claims outside the four-year
13 period that was an issue that had -- that the Court had
14 taken very seriously and we would have to take very
15 seriously.

16 For claims within the four-year period, those
17 claims had statute of limitations issues, too, that we
18 had to grapple with. We posited three theories for why
19 damages -- those damages were recoverable. One was
20 Berkey Photo. One was speculative damages, which were
21 actually the two theories that we pushed the hardest,
22 both of which the Court ruled against on summary
23 judgment.

24 The third theory was continuing violations, which
25 the Court allowed us to move forward on but with the

1 limitations that are applicable to that doctrine, and
2 some pretty strong language about that that's -- you
3 know, that the Second Circuit has taken a very narrow
4 view and restricted it to quite compelling
5 circumstances.

6 So the statute of limitation issues, which
7 essentially were not issues in the Southeast, were --
8 that's a risk factor we had to take very, very
9 seriously.

10 The second cluster of risk factors has to do with
11 other rulings by the Court, one of which -- and it's an
12 important one, and I will talk about it a little bit
13 when I talk about the amount -- the monetary amount of
14 the settlement -- was that -- that certain damages in
15 the case, which the defendants had estimated at
16 approximately a third of the claimed damages, were not
17 recoverable because they were umbrella damages.

18 And the Court, in fact, ruled on that issue and
19 ruled adversely to us. So it was more than a risk. It
20 could have been an appeal issue. But it was a ruling we
21 had to grapple with, and it went directly to the
22 recoverability.

23 Secondly, you had expressed concerns, as we
24 discussed earlier, about the theory that
25 comprehensive -- whether it would be comprehended by the

1 jury and whether -- whether the inferences we were
2 asking for from the evidence -- they were not persuasive
3 to you. And the fact that they -- that you had concerns
4 about it meant that there was a good chance some of
5 those jurors would have it.

6 THE COURT: Let me ask you about the damages
7 again. We had a couple numbers float by, and do you
8 agree that, when you were going into trial, you had
9 settled on a request for 340 million that could
10 potentially be trebled, or do you disagree with that?

11 MR. PIERSON: Let me answer it in a -- in a
12 somewhat -- I agree with the 340 -- well, actually, I
13 need to modify that. Let me walk you through my
14 analysis of the numbers. Okay?

15 So starting principle is, in evaluating a
16 settlement, you have to start -- you have to analyze it
17 relative to single damages. The Second Circuit has --
18 Second Circuit said that in Grinnell that it is improper
19 to view it in terms of treble damages, and that has been
20 repeatedly held. So the starting number, your Honor, is
21 341 million.

22 The umbrella ruling issue, the umbrella ruling,
23 according to the defendants' perspective -- from, you
24 know, the defendants said -- your Court -- the Court
25 accepted their position on umbrella damages. They said

1 that knocked out a third of the claimed damages. So
2 that gets you down to about \$230 million in cognizable
3 damages, your Honor. 40 percent of those damages,
4 about -- which is about 90 -- I think it's 92, 93
5 million dollars, are outside the four-year limitations
6 period. So those damages are only recoverable if you
7 win on fraudulent concealment. The remaining damages
8 that are within the four-year period I think come out to
9 about 135 or 140 million dollars, your Honor.

10 So that's -- you know, you get all -- and then that
11 is subject to all the other risks in the case. That's
12 subject to the risk that they put 25 farmers on the
13 stand and the jury is unconvinced that DFA's done
14 anything wrong here. It's subject to their challenges
15 to Dr. Rausser's testimony. It's subject to issues
16 about -- about the market definition. It's subject to
17 all -- it's subject to their defenses about which
18 companies -- which conspirators were actually in the
19 case and is it a narrower conspirator that's been
20 alleged and does that mean other damages are umbrella
21 damages?

22 So, you know, if we win all the statute of
23 limitation issues, the damages are 231, you know, if
24 you -- if it gets limited to the four years, you are at
25 140. And then you have all the risks below that. And

1 we are talking about a settlement here, your Honor,
2 which is \$50 million in addition to the \$30 million
3 already recovered, so it's 80 million dol- -- and the
4 30 million would be an offset against any treble damage
5 award that comes out of the case.

6 So you are talking about a \$80 million recovery
7 with that amount of damages in play. You know, we are
8 not talking 4 percent, 5 percent. We are talking about
9 the recovery of a very substantial percentage of damages
10 here in a case in which the risks of financial recovery
11 were very, very high.

12 The other risk factor that I want to mention,
13 your Honor, has to do with the risk of delay. To be
14 frank with your Honor, your Honor's ruled on a lot of
15 tough issues in this case, and a lot of -- and probably
16 a lot of issues that could have gone either way,
17 reasonably could have gone either way. And what it
18 inevitably meant, your Honor, was that whatever happened
19 at trial, whatever happened in post-trial motions, there
20 were going to be appeals regardless of -- regardless of
21 who won. And certainly in the scenario in which the
22 plaintiffs win there were going to be appeals.

23 And my experience is that means -- in a case with
24 this much at stake, it means an appeal to the Second
25 Circuit. If it's denied for the defendants, it means

1 request for *en banc* review followed by a cert position.
2 My experience, your Honor, is that is a two- or
3 three-year process, and that's if we win. There's no --
4 if we win. There's no relief and no payment for
5 probably a two-and-a-half-, three-year period.

6 If the case gets reversed and sent back for
7 retrial, which is not uncommon in an antitrust case of
8 this complexity, where your Honor has to make so many
9 hard calls -- if the case gets reversed for a new trial,
10 with the possibility of further appeals, we could be
11 talking five to ten years before there's any relief or
12 anyone gets paid. And that -- that was another factor
13 that it would have been irresponsible -- irresponsible
14 not to weigh, your Honor.

15 The issue -- the next Grinnell factor is the
16 ability of the defendants to withstand judgment, and I
17 don't think -- I don't think that was a major factor in
18 our calculation, to be honest with you. I don't think
19 it was -- not entirely clear that they could have
20 withstood the higher end, but I think the record -- we
21 proceeded on the assumption that they could pay a
22 judgment.

23 I talked about the reasonableness of the financial
24 amount -- the range of the financial amount. I'd like
25 to talk about the equitable relief that was obtained in

1 the case, and there's several points I want to
2 highlight.

3 The first is that one component of the equitable
4 relief, your Honor -- and it was a really -- it was an
5 important component here, was that the
6 nonsolicitation -- the settlement agreement prohibits
7 nonsolicitation agreements going forward. And it does
8 so without time limit; that the FSA provisions in the
9 agreement are limited to the term -- basically to the
10 term of agreement in time so that the FSA provisions
11 basically have a two-year period.

12 The nonsolicitation group -- the nonsolicitation
13 provision moves forward. And frankly, your Honor, as I
14 reviewed -- as we reviewed the record in this case, you
15 know, nonsolicitation in the industry, this is -- it's
16 been a -- from our perspective -- the defendants
17 disagree and would have contested at trial, but, you
18 know, we emphasized that a lot. We thought it was a
19 major part of the liability evidence.

20 And I know your Honor had questions about how it
21 linked up to the damages, but I know the Court had also
22 said, if I read your remarks correctly, that when you
23 looked at the record, this was the one part of the
24 record -- you had some questions about some other
25 inferences, but this was the one part of the record that

1 seemed problematic. And I completely agree with that
2 assessment. And, you know --

3 THE COURT: So let me give you the devil's
4 advocate. They know they are not supposed to be doing
5 that. The judge has already said this looks like a
6 meritorious issue. I don't know how it translates into
7 damages.

8 How much do you gain in a settlement agreement that
9 says, "Don't do that," when they're kind of already on
10 notice that that's probably something they need to
11 refrain from? And then I'm -- one of the points raised
12 is, how is this enforced? Who has the burden of proof?
13 Who's monitoring it? How do we know whether it's
14 happening or not?

15 MR. PIERSON: Well, you know, your Honor, it's
16 enforced like any other provision in the settlement.
17 The settlement provides, you know, the Court has
18 continuing jurisdiction. So one of the early
19 allegations in the case, Mr. Haar learned -- correctly
20 learned -- of this unwritten agreement that existed, and
21 it was one of the facts that he brought to our
22 attention.

23 So, you know, it is a world in which there's an
24 exchange of information of -- you know, fairly
25 suspicious crowd up there. I mean, people are looking

1 for things. So -- but it's like any other provision in
2 a settlement. If there's a -- it's -- a settlement is a
3 contract. If they violate the Court keeps continuing
4 jurisdiction. If there's a violation, they can raise it
5 with the Court, and the Court presumably will issue a
6 show cause to show why it hasn't been violated.

7 And, frankly, if someone came to us after the
8 settlement was put in place and said, "I think there's
9 been a violation of the settlement agreement," we would
10 assess it, and we would do something about it. So
11 that's the short answer to your question.

12 I digress just for a second on that point. You had
13 raised the issue about the case out in Silicon Valley in
14 which the settlement was originally not approved. I
15 think the Shervi (phonetic) settlement, which I may be
16 -- may be approved. But that -- the reason that
17 settlement wasn't approved -- there are two fundamental
18 differences. Number one, the Department of Justice in
19 that case had already weighed in and said, I think the
20 way you are doing this in this industry is illegal.

21 I think the defendants here -- I don't think
22 they -- I think they were contesting whether they had a
23 nonsolicitation agreement. It's not clear to me they
24 were conceding the illegality of it because there is law
25 that creates arguments both ways on that. It was not

1 clear to me they were conceding the illegality, even
2 if -- even if it was proven. So that's one difference
3 with the Silicon Valley case.

4 But the fundamental difference with the
5 Silicon Valley case is that the problem in the
6 settlement there was that the plaintiffs had settled at
7 a high number in terms of the percentage of the damages
8 early on in the case. Let's just call it 20 percent.
9 That's not the exact number, but let's call it 20
10 percent of damages. And then everything went well in
11 the case for them.

12 And the next defendant comes along two years ago,
13 and they say, Okay, we are going to settle with you for
14 10 percent. And that's what bothered the judge was that
15 the -- it made no sense, given that everything had gone
16 well, that suddenly they were settling for substantially
17 less than they'd settled for earlier.

18 This case --

19 THE COURT: But I recall last time we were
20 here, I said -- I was commenting on that, and somebody
21 told me, Well, there's a writ of mandamus, and she
22 shouldn't have done that, and she shouldn't have been
23 looking at the case in that way.

24 And you know what a writ of mandamus is, and I do,
25 and that's the circuit court saying you have overstepped

1 your power as a judge.

2 So did the Ninth Circuit issue a writ of mandamus?

3 MR. PIERSON: I don't think so, your Honor.

4 And, frankly, I mean, I don't think I said that because
5 I --

6 THE COURT: I am not saying you said it.
7 Somebody said, Don't rely on that. There's a request
8 for a writ of mandamus. You know, that's way beyond
9 what Judge Koh should have been doing.

10 MR. PIERSON: Yeah. And, frankly, I don't --
11 the reason -- see, I don't have a problem with that
12 analysis. So, for example, here, if we had settled with
13 Dean for \$75 million, a hundred million dollars, and we
14 came in and said, You should accept the settlement, two
15 years later, even though, you know, we don't -- we
16 haven't walked the smooth path that Silicon Val- -- we,
17 you know, have walked an up-and-down path in which we
18 have taken some hits, had some rulings that helped us
19 and some rulings that hurt us significantly.

20 And -- but be that as it may, if we were coming in
21 here saying, you know, accept a \$50 million settlement,
22 even though you accepted a hundred million dollar
23 settlement two years ago, you and I both would be
24 scratching our heads about this.

25 This situation is exactly the opposite. Here, you

1 know, Dean settled for \$30 million. This settlement is
2 67 percent larger, it's \$50 million, and that's the
3 case, notwithstanding the fact the umbrella ruling
4 potentially knocks a third of the damages out of the
5 case. The statute of limitations issues are what they
6 are. Rausser's -- Rausser's taken some hits.

7 So it's really -- it's really, I would say, almost
8 exactly the opposite of the situation out there. So I
9 don't want to -- you know, I don't want to overemphasize
10 that. I just think it's a fundamentally different
11 situation.

12 So point one about the equitable relief is that it
13 deals with a nonsolicitation problem in a way that is
14 enduring, is as enforceable as any settlement provision,
15 and if the case had gone to trial and there had been a
16 defense verdict, it would have been a validation -- the
17 notion that there was no risk in going to trial and
18 losing and that wouldn't have resulted in bad things,
19 it's just fundamentally wrong.

20 If this case had gone to trial and they had won,
21 farmers that wanted practices at DFA and DMS to change,
22 including nonsolicitation, they would have been nowhere.
23 And not only would they have been nowhere, it would have
24 been *res judicata*.

25 The second aspect of the settlement agreement is

1 the full-supply agreement. And the important point I
2 want to make about the full-supply agreements is, you
3 know, there's this notion that was expressed that Dean
4 controlled 70 to 90 percent of the market. That's just
5 wrong.

6 What the full-supply agreement provision does is
7 say, you know, for the next two years, you are limited
8 to the full-supply agreements in Schedule A. And our
9 best calculation, your Honor, is that that's about 30
10 percent of the market. It may be slightly less; it may
11 be slightly more, but it's about 30 percent of the
12 market, which leaves 70 percent of the market in play,
13 particularly with these nonsolicitation provisions gone.

14 And, you know, that was presented to all the -- to
15 all the state attorney generals and the Department of
16 Justice. You know, no one has expressed concern about
17 that as sort of an appropriate way to deal with that
18 issue.

19 THE COURT: So let me ask you about that
20 because the full-supply agreement provision says you can
21 keep what you have and renew it, and you can't have new
22 ones during this time period. And I am hearing, Well,
23 that's exactly what we are worried about, what you have
24 in place and what you have the ability to renew. And
25 that is the focus of this case. It's not future

1 supply -- full-supply agreements. It's what's on the
2 ground now and how it's affecting the market. What
3 about that?

4 MR. PIERSON: Your Honor, if the agreement
5 preserved more than 30 percent -- more than 30 percent,
6 that would -- that would raise a significant concern,
7 and it would have raised a significant concern to the
8 state attorney generals. But when it's 30 percent and
9 when it's been presented to the Department of Justice
10 and attorney generals in every state that's been
11 affected, and no one has said that is an insufficient,
12 inadequate way -- unreasonable way to deal with this
13 problem, that's a -- that's a reasonable term of
14 settlement, your Honor.

15 The other provisions I wanted to comment on was
16 there are a number of the provisions that go to the
17 integrity of the financial information presented by DFA,
18 which has been an issue -- you know, it's not at all
19 clear that that's relief that could have been ordered.
20 Even if the case was successful, that requiring them to
21 do their statements in connection -- pursuant to GAAP,
22 et cetera, requiring --

23 I mean, one way to view this -- I guess a good way
24 to express it is, you know, look at this like a
25 Sarbanes -- Sarbanes-Oxley provision. And, you know,

1 corporate America is not happy about the Sarbanes
2 requirements, people certified, et cetera, et cetera.
3 You really gotta look at those provisions about the
4 integrity of the financial information collectively.

5 They require, without time limit, the use of a
6 national accounting firm, which has independent -- you
7 know, which has its own liability risks, et cetera, et
8 cetera. So they are required to do that. They are
9 required to conform to GAAP, which is fundamental to
10 financial integrity and is -- and they're under no such
11 requirement right now.

12 And, thirdly, senior management and the
13 independent -- and the auditors committee are required
14 to certify, are required to affirmatively represent that
15 they are responsible for the preparation and integrity
16 of the financial state- -- of the financial statements.
17 So that's really where the Sarbanes-Oxley piece kicks
18 in. That isn't required right now, and --

19 THE COURT: So -- and I agree with you that I
20 would not be taking that kind of micromanaging effort in
21 injunctive relief after a trial in which you prevailed,
22 especially since you didn't ask for that, but the
23 argument on the other side is, yes, and if we find
24 something, we have released it. So it's great to know
25 what's going on, but that release wouldn't allow us to

1 do anything about that. What about that argument?

2 MR. PIERSON: I'm sorry. I am not --

3 THE COURT: So you have got a financial
4 disclosure. We are going to find out about this. But
5 we are not going to be able to do anything about it.
6 And I know that the release is not for future claims,
7 but what about that argument?

8 MR. PIERSON: That's the point, your Honor.
9 That is a provision -- injunctive relief, you know,
10 fundamental -- I mean, we dealt with anticompetitive
11 conditions, really, I think, about as well as we could,
12 and really the only compromise that could realistically
13 have been achieved here. Those provisions are really
14 going-forward issues, to --

15 So we try to deal with a couple aspects of this.
16 Sort of there are issues about which Mr. Haar, in
17 particular, was quite concerned about, about corporate
18 democracy, financial integrity, transparency of the
19 records. And, you know, as in any case where you are
20 dealing -- you know, injunctive relief is designed to
21 stop illegal behavior in the past, but it's also
22 designed to address issues going forward. And none of
23 those provisions were time limited, your Honor.

24 They were real concerns that Mr. Haar expressed to
25 us. They were things that could not have been achieved

1 at trial. And they're a significant provision. I mean,
2 corporate America is in an uproar about Sarbanes-Oxley.
3 So those are significant provisions.

4 The other provision, your Honor, that I wanted to
5 emphasize was -- was this disclosure of the factual
6 record here, which is substantial. I mean, you know, we
7 don't want to release five million pages of documents to
8 the public. I don't think the Court would have wanted
9 it, the third parties involved wouldn't want it, et
10 cetera.

11 But pretty much all the bad evidence in the case is
12 in the summary judgment pleadings, and if it wasn't
13 there, it was in the class certification proceedings.
14 And, you know, as a term of the settlement, we
15 negotiated the ability to release that information. And
16 it will be -- I am confident it will be posted on the
17 Vermont Attorney General's website, just as they posted
18 earlier information.

19 And that has -- that has implications for farmers.
20 It has implications for the public. And perhaps most
21 importantly, it has implications for law enforcement
22 agencies and legislatures. And part of our view about
23 this case all along, your Honor, has been to get that
24 evidence out there; that at the end of the day -- you
25 know, it is not realistic for the Court to be managing

1 milk markets for the next five, 10, 15 years. At the
2 end --

3 And I think there's probably agreement on that,
4 that a lot of the solutions here, at the end of the day,
5 need to come from antitrust law enforcement agencies,
6 need to come from state legislatures, need to come from
7 farmers making informed choices. And that's -- that's
8 what that's designed to do.

9 Now, there are a couple of broad points I would
10 like to make about the equitable relief. One is that
11 the equitable relief achieved here is somewhat greater,
12 from my perspective, than the equitable relief achieved
13 in the Southeast, which was approved as fair,
14 reasonable, and adequate on a -- frankly, on a stronger
15 record. You know, this is broader relief in the sense
16 that it deals with nonsolicitation, which the Southeast
17 didn't deal with at all, which was a major part of the
18 evidentiary record here.

19 It is broader than anything that was done in the
20 Dean settlement. You will remember that we tried to
21 take one step in that case, and it resulted in a lot of
22 divisions about how to handle FSAs. And so the Dean
23 settlement, which was approved by the court as fair,
24 reasonable, and adequate, doesn't have -- doesn't have
25 any kind of injunctive provisions like that. So this

1 settlement goes beyond both of those settlements, which
2 were -- which were approved.

3 It was sent to every relevant law enforcement
4 agency, state and federal, that regulate this order.
5 None of them said those provisions are insufficient.
6 There are other provisions you should be considering.
7 Nobody, including the Vermont Attorney General's Office,
8 raised any concerns --

9 THE COURT: Well, I would think it would be an
10 overstatement that they got intimately involved in the
11 Dean settlement.

12 MR. PIERSON: Excuse me?

13 THE COURT: They did not get intimately
14 involved in the Dean settlement either, and I don't see
15 them popping up in other cases. So I assume you didn't
16 get a lot of input in the Southeast milk case from them
17 either.

18 MR. PIERSON: Yeah, I would say -- well, I
19 can't speak for the Southeast milk case, but what I
20 would say, your Honor, is that -- so, for example, when
21 Vermont intervened earlier in this case -- they do look
22 at the settlement, and they do discuss -- and they do
23 discuss these terms with us.

24 But I recall, because I looked at the letter the
25 other day, when they intervened in connection with the

1 Dean settlement, they specifically said that sometimes
2 they intervene, sometimes they don't. They look at
3 these settlements, and, you know, for the state of
4 Vermont, the milk industry is central. This is not --
5 this is not a window frames or whatever. This is -- you
6 know, this is a highly political issue that people
7 are -- people are paying attention.

8 So, your Honor, you are going to have to make a
9 judgment about how much weight to give that. But all I
10 am saying is that you had some very experienced,
11 hard-working antitrust counsel that made a judgment
12 about this, and you had -- it's sent to every law
13 enforcement agency, which, under CAFA, we are required
14 to send it. We probably would have sent it to them
15 anyway. But, you know, there's a framework set in place
16 for them to review it.

17 And I can't -- certainly outside of Vermont I can't
18 make represen- -- and even within Vermont I can't make
19 representations of how they do their job or whatever.
20 What I can tell you is there's a mechanism in the law,
21 in CAFA, to get them this information so they can review
22 it, so they can let a court know if they have -- they
23 have any concerns about its sufficiency, and none of
24 them, at the state or federal level, has raised any
25 concern about it. No one's raised concerns to us. No

1 one's filed any concerns with the court.

2 So the reality with this equitable relief,
3 your Honor, is that, you know, you can -- I guess there
4 is one other point I want to address, and then I'll -- I
5 want to make sure I have answered all the Court's
6 questions. But here's the other point I wanted to make.

7 You know, you know, a colleague of mine told me
8 once -- and you've probably heard the same expression --
9 don't let the perfect be the enemy of the good. And
10 there -- you -- one can always point to some provision
11 and say, well, this could have been a little better or
12 that could have been a little bit better.

13 But if you -- you know, one of the frustrations
14 that I have had is -- in sort of working through what I
15 think is a really good settlement, and -- I think it's
16 an excellent settlement. It's not just a pretty good
17 settlement. I think it's really -- it's an excellent
18 settlement.

19 One of the frustrations I have had is when you try
20 to sort of tie down, well, what is it you'd like to have
21 happen here, other than what's happening? I kind of
22 made notes about a couple things that were mentioned
23 today, which seemed to be sort of the guts, other than
24 what I would describe as sort of, you know, minor points
25 about, well, they are already doing that, or they may

1 not be required to do in the future but they are kind of
2 doing it now, I would -- and I don't mean this
3 disrespectfully. Some of those I kind of put -- I just
4 don't think those are really material criticisms, but
5 there were a couple things they mentioned.

6 They mentioned there should be controls on
7 nonsolicitation. Well, there are controls on
8 nonsolicitation. And I don't really know what more we
9 could have done with that than -- we have done it. We
10 have got a blanket going-forward provision subject to
11 court enforcement.

12 There was a lot of talk about milk testing. And,
13 your Honor, the reality is there just -- it hasn't been
14 a major part in the case because there just wasn't --
15 you know, we had five million pages of documents. If
16 there was a strong evidentiary basis -- you know, to a
17 flaw, we included things in this case.

18 THE COURT: Well, let me tell you the kind of
19 ballpark appeal of it. DFA, DMS controls the testing.
20 The testing is done at the time the truck picks up the
21 milk. The milk goes thereafter. There's no retesting.
22 And you have to have confidence in the tester. So why
23 not say, You know what? A lot of other industries have
24 independent labs doing that, and why can't you divest
25 that part of your business and -- or outsource it or do

1 something so it's in independent hands? And then when
2 we're told that we contaminated a truckful of milk and
3 we have to pay \$20,000, it's on us.

4 So that's a lot to ask, but I didn't -- I have
5 never even heard that request before today. I hadn't
6 heard that was something that was that important to the
7 people that were primarily the source of information to
8 you.

9 MR. PIERSON: Your Honor, if -- if -- the case
10 has been going on for five years. The class reps are --
11 are not shy. You know, if they had -- you know, they
12 saw the summary judgment papers. You know, they saw
13 their argument. I mean, if there were, you know,
14 concerns that -- the only concern that was ever really
15 raised -- and it goes to a point Mrs. Haar raised --
16 was, Gee, why aren't you making more of DFA ownership of
17 processors in the Northeast? I mean, I think from their
18 perspective -- and, again, there's a certain lore in
19 the issue.

20 THE COURT: Let me say, they have asked to
21 speak directly to the Court, and I try my best to
22 respect the attorney/client relationship, because it
23 comes up, especially in criminal cases, where somebody
24 says, Can I just talk to you without my attorney? And I
25 have to explain that that might not be in their best

1 interests. But they did make efforts to have that
2 direct conduit. So I don't know what they were going to
3 say.

4 But when we were talking about the Dean settlement
5 hearing and other instances, I do remember taking a
6 break and allowing you to talk to them about their
7 desire to talk to me.

8 MR. PIERSON: Well, you know, your Honor,
9 what -- fair enough. I don't disagree with anything you
10 just said. The problem for us, as lawyers, your Honor,
11 is that, you know, we gotta go where the evidence takes
12 us. And, you know, the evidentiary record did not
13 support making that a substantial part of the case. I
14 mean, it's been raised as -- you know, there was one
15 person, I think the farmer in Upstate New York, who had
16 concerns about this, but even his testimony, his
17 deposition was, Well, I thought maybe that had happened,
18 but, you know, I didn't really have a way to prove it.
19 I'm --

20 So there are suspicions, and there are a lot of
21 suspicions in this industry. But as lawyers,
22 your Honor, we can't make this stuff up. And we
23 can't -- if it's not provable in some objective way,
24 someone -- someone saying, Gee, you know, my PI count
25 was high, and I don't really think it should have been

1 that high --

2 THE COURT: I am not talking about in terms of
3 falsification of data or misrepresenting the milk test
4 results. I am talking about in terms of control, which
5 was a theme in this case. And you talked to me about
6 control of processors, and I pushed back and said, Well,
7 what about these independent processors? And we talked
8 about milk leaving the order and when it could happen
9 and when it was not.

10 And I see this as an issue of control, is if the
11 person who is determining what's going on with your milk
12 is also the person who's paying you, they have got a lot
13 of control.

14 MR. PIERSON: Your Honor, here's the problem,
15 though, is that there was minimal evidence -- in this
16 record of five million pages and probably a hundred -- a
17 hundred-plus depositions in the two cases, there was
18 minimal evidence -- and that may be overstating it --
19 that that authority had ever been abused in any way.

20 And, you know, we can't -- believe me,
21 your Honor -- and you see some of this in the various
22 objector statements. There are so many suspicions and
23 concerns about what DFA is doing, et cetera, et cetera,
24 you know, we -- there's gotta be evidence to support
25 them. There have gotta be facts to support them, or we

1 can't -- we can't tube a settlement because things that
2 have limited -- limited, if any, support in the record
3 aren't being addressed.

4 And, you know, ultimately, your Honor, you know,
5 that question just goes to -- you know, a settlement's a
6 compromise. I mean, are there other things that
7 potentially could have been addressed? Yeah. I mean,
8 there's always more you could do. There are always more
9 criticisms. But there simply was not a factual basis in
10 the record to push that issue hard, particularly on a
11 class basis.

12 Your Honor, the other -- you know, when you asked
13 the other thing -- when they say, Okay, well, what could
14 you have done differently? What would we like to have
15 seen you do differently? The other things that were
16 mentioned was abolish DMS, which, you know, just as
17 counsel for the DFA, DMS subclass, I mean, that's
18 just -- was a non -- it was a nonstarter, relief we
19 would never get. I don't think it was relief we could
20 advocate.

21 There was discussion -- what has probably been
22 maybe as important an issue as any to Mr. Haar is
23 changing the way votes are tabulated and having --
24 getting rid of block voting and doing voting by mail and
25 having an independent person counting it. And, you

1 know, we tried to negotiate that issue.

2 We got what I would call modest relief on that
3 point, in the sense that they agreed to look at it and
4 implement changes if they concluded those were
5 warranted. But there was no possibility that a jury
6 trial would have resulted in that -- in that relief. So
7 even going forward to trial wouldn't have gotten them
8 that.

9 And the only other really specific thing that was
10 mentioned is that they like board members to attend --
11 to attend contract negotiations. There are 53 board
12 members. The settlement provides that they gotta
13 disclose -- they gotta disclose the contracts to the
14 boards, and that's -- that's really sort of the only --
15 I mean, I think it would -- A, it was not a material --
16 it's really not a material change they were suggesting,
17 and it was not a practical change, your Honor.

18 I do want to leave some time for Mr. Abrams to
19 address -- to address points that I haven't addressed.
20 I'm not sure I ticked off all the Court's questions.

21 THE COURT: I had -- doesn't matter to me
22 which of you address it. I had concerns about the
23 release.

24 MR. PIERSON: Yeah, let me say a couple things
25 about the release too, and Mr. Abrams can make any other

1 comments he wants to about it.

2 Number one, this is the release that was used in
3 the Southeast. It was approved by the court in the
4 Southeast as fair, reasonable, and adequate. I
5 understand that's not binding on you, but it is the same
6 release that was used there. Mr. Abrams can talk about
7 this. But I -- I don't believe anyone was objecting to
8 it down there, nor do I believe that -- that anyone has
9 said, subsequent to the settlement, that that release
10 has caused problems for people. Maybe Mr. Abrams will
11 know better than I too and he can tell you if I'm wrong.

12 Secondly, there were two -- the release language --
13 you know, general release and also a release of sort of
14 affiliated entities, that's pretty standard in
15 settlements from my experience, and Mr. Kuney can speak
16 to it directly, but, you know, the concern -- here's the
17 concern with not releasing the affiliates, et cetera, et
18 cetera, is that -- is that if we release the claims
19 against DFA, DMS, what's to stop us --

20 I was just involved in another settlement -- in a
21 mediation in which the defendant was raising exactly the
22 same issues. What's to stop you the next day from going
23 in the back door and suing their affiliated entities or
24 their officers, et cetera, on exactly the same theory?
25 So --

1 THE COURT: I agree that officers, employees,
2 agents may be covered. I am concerned that I wouldn't
3 be able to tell you who's covered by this release. I
4 would have some guesses on some of it, but I think -- I
5 see a lot of releases, and I think this is a broad
6 release.

7 MR. PIERSON: Your Honor, what -- what I would
8 suggest -- and, again, Mr. Abrams and Mr. Kuney will
9 have their own -- their own perspectives on this, but it
10 did seem to me that if the Court has concerns about
11 particular provisions like that or particular language,
12 they are curable problems. They are not a reason --
13 they may be a reason to say, I need to see a different
14 release from you. Can you guys -- this is my concern.
15 Can you address this in language? but that's -- you
16 know, rather than starting over, after five years and
17 three months, I think that that would be the thing to
18 do.

19 So let me close with this comment, your Honor --
20 with a couple comments. You know, one thing I have
21 tried to really stay away from is -- as you can imagine,
22 your Honor, it wasn't -- it wasn't easy to hear some of
23 the perspectives that were expressed today. I have been
24 an attorney for 30 years, you know. I came from a
25 family -- my father was a teacher, a professor; my

1 mother was a minister. I came into this profession, and
2 I ultimately moved to the plaintiffs' side, and I have
3 been running the *pro bono* program at my firms for 10
4 years. I came to it because of a really -- a really
5 deep commitment to justice.

6 And there are two things that have defined my
7 career, your Honor. One is integrity, and one is an
8 intense dedication to the cases I worked on. And
9 that -- that has not just been true of me. That's been
10 true of all of my colleagues in this case. You know, we
11 have fought like hell in this case for five years to do
12 the right thing. And we brought exactly those --

13 I have no fear about going to trial. I got the
14 biggest -- was part of the trial team that got the
15 biggest verdict in the country two years ago. That was
16 not an issue here. Fees were not an issue. We did what
17 we thought was the right thing. We got -- we have
18 gotten \$80 million for farmers in a case in which the
19 damages -- the realistic damages, maximum, were not a
20 whole lot above that, and the defendants were saying
21 they were zero.

22 We dealt with a solicitation problem, which has
23 been a major problem in this industry. We got equitable
24 relief that no law enforcement agency in the United
25 States has gotten in this industry, let alone in

1 Order 1, in the last decade. This is not a pretty good
2 settlement. It's not a good settlement. It is an
3 excellent settlement, your Honor, and I would request
4 that you approve it.

5 THE COURT: All right. Thank you.

6 Mr. Abrams?

7 MR. ABRAMS: Thank you, your Honor.

8 May it please the Court. I am counsel for the
9 non-DFA, DMS subclass. I would like -- I listened to
10 all -- the best I could, to all of the objections and
11 comments, positive comments made by the class members,
12 and I think I heard most of what Mr. Pierson said.

13 My effort was to take the comments of the class
14 members and try to categorize them to be helpful in
15 addressing them to your Honor. Hopefully I will do
16 that. I also intend to try to address all of the points
17 you raised earlier.

18 Mr. Pierson started off with risks. I think that
19 was appropriate. Any settlement has to take into
20 account risks. Your Honor said in this case that the
21 case is, quote, laden with risks. And your Honor was
22 absolutely right. And we saw that. Actually, we saw
23 that before we filed the case, and it's really cases.
24 And I will tell you that in a minute. You heard me
25 connected with the Southeast. Yes, I was the lead

1 counsel in the Southeast case.

2 The case -- the cases, because this is true for
3 both the Southeast case and the Northeast case -- they
4 were filed -- and when you file a plaintiff case, I
5 learned -- because my whole career was with -- on behalf
6 of defendants -- I learned when you file a plaintiff
7 case -- because I was asked to do this case and I was
8 asked to do one other case by my prior law firm, and I
9 will get to that in a minute -- you often find --
10 typically find that if you file a plaintiff class
11 action, you are going to find 30 to 50 other law firms
12 that file, and you end up in an MDL.

13 We filed these cases. There were a couple of
14 firms, and I literally mean a couple of firms, that
15 filed copycat cases in the Southeast, not 30 to 50. And
16 that tells you what the plaintiff bar thought the risks
17 were in proceeding with the case. And as soon as I was
18 named lead counsel, they disappeared. Cohen Milstein
19 was there.

20 And the same thing happened with the Northeast
21 case. No copycat suits. You heard Mr. Pierson saying,
22 and you probably heard at other times, that there were
23 no government suits. Typically these class actions,
24 there are government suits. You follow on the heels of
25 that. There weren't any cases filed by any government

1 entity in connection with the milk business that we're
2 talking about here.

3 Now, you heard from one of the Haars earlier about
4 a whole record being created in the Southeast. I'm very
5 familiar with what the government created in the
6 Southeast. They took a lot of depositions. I read most
7 of them. They didn't file a lawsuit. They did not
8 create a record that we could rely on. We created the
9 record that we could rely on.

10 And that's the same thing with respect to the
11 Northeast. There's no easy case here. It's a very
12 difficult case, which is why I said your Honor was
13 right: It was laden with risks.

14 And cases develop differently. Your Honor has said
15 over time that -- and I hope you don't mind me referring
16 to your -- some prior orders because I --

17 THE COURT: I would hope I didn't mind. That
18 would be kind of strange.

19 MR. ABRAMS: Your Honor said in your November
20 25, 2014, order, at 5 and 6, that, Considering the
21 strengths and weaknesses of the case, there's a, quote,
22 legitimate risk of a defense verdict at trial.

23 I don't quarrel with any -- I don't say this to
24 quarrel with what your Honor said. I say it because we
25 have to take into account the risks. I am not saying

1 you're right. What I am saying is we have to take it
2 into account, and we did.

3 You noted that the documentary proof of antitrust
4 violations in some respects did not provide evidence of
5 conspiracy. And you recognized the risks we have of
6 proving any damages at trial.

7 Now, Mr. Pierson went through a damage number. I
8 actually end up at the same number he ends up. I get
9 there a little differently. And the difference is there
10 is overlapping -- there are overlapping sales between
11 the statute of limitations and the nonconspiring
12 producers.

13 So you take that into account, and I increased the
14 damages, but you get to somewhere between 130 and
15 150 million dollars because you take off the 35 percent
16 for the nonconspiring producers. If you were to listen
17 to the defendants -- and in this instance I listened. I
18 am not agreeing, but I am not listening -- and they say
19 the statute of limitations eliminates another 35
20 percent. Well, that's where I say there's some overlap
21 there. But you end up with something like 130 to
22 150 million dollars in single damages.

23 An \$80 million damage number -- settlement number
24 that we get is more than half of that. And if you look
25 at any of the cases, they would recognize that is an

1 excellent settlement.

2 I wanted to tell you a story, if I may -- it will
3 take three minutes -- of the -- the real -- it really
4 goes to the risk in this case and the risk we took.

5 I had a unique and unfortunate situation. But for
6 a year clerking, I worked at the same law firm for 38
7 years. That law firm was Howrey. That law firm
8 dissolved in 2011.

9 I worked with a group of people at that firm.
10 There were about 17 people that were part of cases I
11 tried, the people I worked for for many, many years. I
12 happened to be older than them, so I can't say -- but
13 their whole careers were spent with me, and we wanted to
14 go together to someplace. 17 people, it's a big group.

15 We talked to a lot of law firms in Washington, the
16 best law firms in Washington. And I guess it's not so
17 humble to say that we were welcomed at every one of
18 those firms but one. But any number of those firms
19 really questioned whether they wanted to take the milk
20 cases. And we had two conditions -- I had two
21 conditions. You take our group and you take the milk
22 case, and if you don't want to, we'll shake hands and
23 I'll go on.

24 That shows the risk -- it showed to me -- I knew it
25 anyway, but it showed to me, and I say it to you,

1 because of the risk that's involved in this case. They
2 had no idea what would happen to the case in the
3 Southeast or the Northeast when we moved. Got a very
4 good result in the Southeast. The law firm I went with
5 is happy. So is the trustee in bankruptcy for Howrey.
6 But firms were not just jumping on board to take on the
7 milk cases. It's a risky case. Your Honor recognized
8 it, and we recognized it, and we had to evaluate the
9 settlement in the context of risk.

10 Your Honor was told about my knowledge of the
11 Southeast case. I have some knowledge of it. I am sure
12 I don't have as much as it was touted to be, but I have
13 some knowledge of the Southeast case.

14 THE COURT: But you were lead counsel, right?

15 MR. ABRAMS: I was lead counsel.

16 THE COURT: So you have a lot of knowledge of
17 that case.

18 MR. ABRAMS: I hope I have retained some of
19 it.

20 I want to talk about the differences between the
21 Southeast case and the Northeast case, because some
22 people equate the two. In the Southeast case, there was
23 a defendant called SMA. It was the marketing entity.
24 It proclaimed its mission was to control all the milk
25 marketed in the Southeast. And you know what? They

1 nearly accomplished their mission in terms of
2 controlling the milk, because everything had to funnel
3 through SMA. And that allowed defendants, by our
4 allegations, to enact, monitor, and enforce suppressed
5 prices.

6 There's no comparable entity in the Northeast. The
7 Northeast is a different market than the Southeast.
8 It's a more fragmented market than the Southeast. And
9 it will be more difficult to show the jury the effects
10 of the actions of the defendants in the Northeast versus
11 the Southeast.

12 There's a difference in the markets between the
13 Southeast and the Northeast, the markets themselves. In
14 the Southeast, SMA had control over 88 percent of the
15 raw milk. And in the Southeast, Dean and DFA had over
16 60 percent of the milk processed. Here, defendants'
17 market share, per Dr. Rausser, was estimated to be much
18 less. DMS has between -- according to our and
19 Dr. Rausser's analysis, between 40 and 58 percent of the
20 raw milk marketed, and Dean and DFA had between 20 and
21 25 percent of the milk processed. Excuse me. Those are
22 very different markets.

23 Oh, by the way, just to get -- you have been hit
24 with a lot of numbers today. In the Southeast, there
25 were 6,086 claims that were made on the settlement in

1 the Southeast. In the Northeast, I keep hearing about
2 12,000 or 12,800 or those numbers. In the Northeast, in
3 the Dean settlement, there were 7200 claims.

4 Okay. There are differences in the court orders
5 between the Northeast and the Southeast, and those
6 impact, obviously, any case. In the Southeast,
7 defendants never even argued statute of limitations.
8 There's a two-page motion *in limine*. There was never
9 really any serious issue in the Southeast. Here, the
10 Court found statute of limitations to be a major issue
11 and a potential issue having significant impact on
12 damages.

13 In the Southeast, the court didn't exclude any of
14 Dr. Rausser's opinions. Here, the Court excluded
15 aspects of opinions on relevant market and the damages
16 model Dr. Rausser had.

17 In the Southeast, the court ruled that plaintiffs
18 could admit damaging evidence of defendants' sweetheart
19 deals. Here, the Court indicated evidence outside the
20 statute of limitations may not be admissible. May not.
21 I emphasize my recognition of the "may not."

22 Okay. I didn't mention the amount of damages
23 claimed in the Southeast. We talked about it here, but
24 in the Southeast it was \$415 million, if you want a
25 comparison to the 130 to the 150.

1 Okay. The process for settlement has been raised
2 here. What occurred? I was -- I negotiated -- I was
3 the lead in negotiating the settlement in the Southeast,
4 and I think it's fair to say I was the lead in the
5 Northeast. I will tell you that settlement negotiations
6 lasted in this case for years, literally years.

7 The Court ordered a mediation, you will remember,
8 with Michael Marks. Indeed, the Haars attended that
9 mediation. It got absolutely nowhere. No negative on
10 Mr. Marks; it just didn't get anywhere. There was no
11 offer of settlement.

12 In early 2013 -- and I am looking at my notes just
13 to remember the chronology -- counsel for DFA and DMS
14 and I talked some more. I am going to tell you that the
15 class reps were absolutely informed of those
16 discussions. They didn't go anywhere, and they were
17 informed that they didn't go anywhere, but they were
18 informed of those discussions and that they didn't go
19 anywhere.

20 They resumed -- discussions resumed in 2014, and,
21 again, there was no success. And, again, I will tell
22 you, without any equivocation, the class reps were
23 informed of those discussions.

24 May 2014, settlement was discussed again. We were
25 so far apart, there was nothing to discuss. They ended.

1 The class representatives were told that.

2 Well, now it's June. You may remember that the
3 final pretrial was June 23rd. I remember this clear- --
4 one of the few things I remember clearly because I have
5 a son who was getting married. He lives in Los Angeles,
6 and there was a weekend party where we were going to
7 meet the parents of the bride.

8 And I met with -- counsel for DFA, DMS called me,
9 and I met with him on Wednesday. And he said, Well,
10 it's really the end of the line. You know, do you think
11 we could settle this case? And I will tell you -- I
12 won't get into the specifics because I don't think
13 that's right. If you ask me, I would answer you.

14 THE COURT: No, because settlement
15 negotiations are not admissible. I am much more
16 interested in what broke down between class counsel and
17 class representatives because this is a very unusual
18 situation.

19 MR. ABRAMS: Yes, but I will mention --

20 THE COURT: You can go through it your way. I
21 don't need to know.

22 MR. ABRAMS: No, no. I am going to do it your
23 way. I am going to try to.

24 I will tell you, because I think you asked this
25 question, in the Southeast we had an objector -- a class

1 rep who objected to the settlement as well. I just tell
2 you that.

3 But to answer this question with the breakdown --
4 well, I can't tell you what's in the state of mind of
5 some of the class reps, but I can tell you the events.

6 I told you we met on that Wednesday before the
7 weekend. The offer was nothing. It was nothing. There
8 was nothing to really say.

9 I got back -- I had to go to Greece for a client
10 after this event for my son. I got back on Thursday. I
11 had a text message from this person, Give me a call. I
12 gave him a call. He said -- I won't go into what he
13 said. But a substantial number was discussed by him,
14 but never -- no commitment or anything. And I said, I
15 can recommend to my clients a certain number. He didn't
16 have that authority then. I said, But, you know, this
17 is it because we are going to the final pretrial Monday.

18 On Friday I got a phone call agreeing to the number
19 I said. And I had analyzed this case -- I mean, I had
20 in my mind. I said that to him, but I also said, You
21 remember from day one there have to be nonmonetary terms
22 involved in this settlement, because I learned that in
23 the Southeast how important they were, and I said it
24 here.

25 So it ended up that I didn't negotiate with him on

1 the nonmonetary terms. Mr. Kuney and I negotiated on
2 that. And on the day -- that Friday, that day, the
3 class reps were called individually, because we couldn't
4 get a group call that quickly. It was Friday that I
5 learned that they would offer this number. And they
6 were told of the number and that we had nonmonetary
7 terms that had not been negotiated, and I was told that
8 people were pretty happy.

9 On Monday, people weren't happy anymore. I don't
10 know why. What I do know is that a statement was filed
11 with this court talking about all of the group
12 discussions -- and we reaffirm that in our affidavits --
13 that occurred, and there were a lot of group discussions
14 between us and the class reps. And there were a lot of
15 issues raised.

16 And there were a lot of suggestions about
17 nonmonetary terms, and I will tell you every one of
18 those suggestions that we got was pursued -- I pursued
19 it and others with me pursued it -- with DFA, counsel
20 for DFA. And we got a lot. We didn't get everything.

21 Now, this is off track, but it's come up so often I
22 will say it: I never heard about the milk testing being
23 a part of this case until today. I understand
24 your Honor's point about control. It makes sense. It
25 was never an issue in this case. We haven't seen any

1 evidence regarding it.

2 And what I will tell your Honor, which is what
3 every farmer has been told, "If there is any indication
4 of retaliation for your involvement in this suit, you
5 tell us because we wouldn't stand for it." You'd be
6 told immediately -- well, you'd be told after I
7 discussed it with opposing counsel. You'd be told.

8 And -- well, this is related to that. It's not
9 exactly on point, although it gets there. You asked
10 about certain provisions and what good is it if they're
11 in the settlement agreement if they're illegal anyway.
12 And I think you heard the response to that.

13 First of all, it's a whole lot easier coming to
14 you, because you will have jurisdiction, and saying
15 there's a violation, and you issue a show cause order,
16 rather than have it be part, a very small part, of a
17 major antitrust suit that you have to prove. They will
18 have that as their right in the settlement agreement,
19 and that is very significant.

20 In the example that was brought up were the audit
21 documents in this context. Well, you know what? If --
22 there are rights with the audit document. I don't
23 remember them all right now. But there are rights there
24 for that and other things in these nonmonetary terms.

25 And if they're not satisfied -- I am not talking

1 retaliation now, but if they are not satisfied, there
2 are avenues to take. You could go to the Vermont
3 Attorney General and talk about unfair trade practices.
4 You can pursue an unfair trade practice, if it rises to
5 that. There are avenues for relief.

6 And I should tell you, in the Southeast, there's
7 some settlement provisions, and we don't think Dean
8 complied with a certain requirement, and we don't think
9 SMA complied with a certain requirement, and we have
10 filed motions before Judge Greer, and they're pending
11 before Judge Greer, to pursue those in that case. And
12 the same thing would be done here.

13 Oh, public disclosure of the record and the request
14 that, you know, Why don't they just open up the whole
15 record? Well, I sort of have learned this: You know,
16 if you want to bury something, you bury it in five
17 million pages of documents. I would much rather -- and
18 indeed what happens is you cull those documents, as I am
19 sure your Honor knows, to find the right documents.

20 We found the right documents for this case, like we
21 do for cases, and what is being opened and available in
22 conjunction with our -- our briefing -- there are 545
23 exhibits. The plaintiffs' certification briefs include
24 153 exhibits. And these exhibits mean deposition
25 experts, deposition exhibits, expert report examples,

1 the whole gamut of what is in the case.

2 Defendants' certification brief has 48 exhibits.
3 Our summary judgment brief has 282 exhibits. And I know
4 there are problems with all this in another context, but
5 in this context, the availability of these records,
6 culled as they are, is significant. And our summary
7 judgment -- or defendants' summary judgment brief has 62
8 exhibits. Those are the key documents in a case.

9 And, you know, if you have a trial exhibit list,
10 and it's thousands of exhibits, well, you have them
11 there to make sure, but you know that you are really
12 talking 50 to a hundred documents that are the key
13 documents in a case. These are the key documents. They
14 are available. And they're available, frankly, in a way
15 that makes more sense than opening up a
16 five-million-document case record.

17 Okay. You asked a question about division between
18 the class reps and class counsel. I was asked by --
19 Mr. Sitts opposes the settlement. He and his son both
20 talked. They oppose the settlement. They're our
21 clients. He asked me if I would be available to try
22 this case, if it had to be tried, and I said absolutely.

23 I am representing the class I represent zealously.
24 That is my job. And I will do my job. And if you say
25 we go to trial, we will go to trial. I am here telling

1 you this is an excellent settlement, but whatever you
2 decide, I am here to do it.

3 You asked about the release, and I guess I -- I --
4 I don't -- I am not looking at it correctly, because
5 when I look at the release, it releases claims related
6 to the facts and circumstances alleged in the complaint.

7 THE COURT: Well, it says, "includes any and
8 all claims, regardless of their nature, from January 1,
9 1994, through and including the effective date, arising
10 out of, associated with, related to the facts or
11 circumstances alleged in the complaint, including but
12 not limited to settling defendants' sale and marketing
13 of raw Grade A milk or their purchase of or failure or
14 refusal to purchase raw Grade A milk that was produced
15 in and pooled on Federal Milk Order 1.

16 "Release claims include all claims that were
17 asserted or could have been asserted, arising out of or
18 relating in any way to any conduct alleged in the
19 complaint" -- which is all the pleadings in this case --
20 "regardless of whether those claims arise from common
21 law theories, tort or contract, including without
22 limited" -- "limitation, breach of contract, breach of
23 fiduciary duty or theories under federal, state, or
24 other statutory law, rule, or regulation."

25 And then we have a very broad definition of the

1 people who benefit from the release. So that looks very
2 broad to me. And as I say, I see a lot of releases, and
3 I just had one in a wage-and-hour case in which the
4 persons were getting \$50, a hundred dollars in their
5 settlement, and they were releasing all claims related
6 to their employment. And actually that's not
7 permissible, so we sent it back, and they fixed the
8 release.

9 So I didn't need anybody to point to me concerns
10 about the release. I raised them with you. And I
11 raised it the first time I saw it, and I raised it in
12 the notice to the class members. It's a lot broader
13 than that notice is saying.

14 MR. ABRAMS: I -- I am not trying to quarrel
15 with you, but I will just tell you how I look at it.

16 THE COURT: Okay.

17 MR. ABRAMS: The "including but not limited
18 to" is a subset. It's a defendant way of writing,
19 frankly. But it's all related to the facts and
20 circumstances alleged in the complaint, in the amended
21 complaint. That's where your -- what you are releasing.

22 And when I look at that, that's -- yes, is it
23 written in a broad way, but it's not different than --
24 you are always releasing what you allege in a complaint.
25 That's the nature of the settlement. And that's how I

1 read this release provision.

2 THE COURT: How about "including but not
3 limited to anything" --

4 MR. ABRAMS: I'm sorry.

5 THE COURT: Sorry. "Including but not limited
6 to anything about the sale of raw Grade A milk"? What
7 wouldn't that cover that they are doing?

8 MR. ABRAMS: Like we didn't allege in the
9 complaint these tests regarding raw Grade A milk.
10 That's not what is -- it's not a fact or circumstance
11 alleged in the complaint. I don't think it's part of
12 this case.

13 THE COURT: Well, what about "including but
14 not limited to settling defendants' sale and marketing
15 of raw Grade A milk or their purchase of or failure or
16 refusal to purchase" --

17 MR. ABRAMS: I'm sorry, Judge. I can't hear
18 you.

19 THE COURT: I know. I have a low-pitched
20 voice that's very hard to hear, and sometimes that's a
21 blessing.

22 MR. ABRAMS: It's me. I --

23 THE COURT: That's okay. So let's -- one
24 thing I want to do is -- it's 10 of 5:00, and I want to
25 make sure that we hear from the defendant. So I say

1 it's broad; you think it's not broad. Let's move on to
2 anything else you wanted to say to me before I turn to
3 defendants?

4 MR. ABRAMS: When I heard that we were better
5 off going to trial and losing, I shook my head. I don't
6 agree with that. I don't agree with that from all the
7 positives you get from the settlement, and I do think
8 there are substantial positives, both monetary and
9 nonmonetary. But I think there are substantial
10 negatives you get from going to trial and losing, which
11 is ratifying everything that the plaintiffs are talking
12 about here. I am not interested in that.

13 I am interested -- if I go to trial, I want to win.
14 And so when I hear that, it's telling me that people
15 aren't looking at it the same way I am, in a very
16 significant way, which is what one, I think, should do
17 in analyzing whether a settlement makes sense.

18 I know you -- I should sit down.

19 THE COURT: If you have a short thing you want
20 to say, that's fine, but I am going to turn to the
21 defendants.

22 MR. ABRAMS: Yeah. No. And I -- I can't say
23 I want them to be heard, but I want this hearing to --
24 oh, can I just say one other thing?

25 THE COURT: Sure. Yes.

1 MR. ABRAMS: Put this here. I heard about
2 the -- I'm sorry? I heard about the notice point, and
3 people didn't get -- you didn't hear all the objections
4 you would have heard if everybody got the notice, or
5 some comment like that from some people who were
6 objecting.

7 Well, the fact is that, in addition to the formal
8 notice that went out, there's a publication called
9 Farmshine which purports to go to 75 percent of the
10 farmers in the Order. And there was an article on
11 producers urging opposition to DFA, DMS settlement,
12 which was the result of a letter from three of the class
13 reps who also reached out to GCR, GLOBAL Competition
14 Review, and provided the statement that had been
15 submitted to the Court *in camera*.

16 So I think that there was substantial word out
17 there about this settlement, and of course there's the
18 notice, which is that's the main point of the notice.
19 So I think what you heard today is -- you heard from
20 three class reps opposing the settlement. You heard
21 from a class rep in favor of the settlement. And you
22 heard from others in favor of the settlement.

23 I do believe all the issues were raised before
24 your Honor. They were -- really covered the issues, but
25 I don't see that there's large opposition to this

1 settlement from the class.

2 With that, I will sit down. Thank you.

3 THE COURT: Thank you.

4 Let's hear from the defendants.

5 MR. KUNEY: Thank you, your Honor. This could
6 possibly be one of the briefest times I'm up here.

7 THE COURT: I was thinking you usually get a
8 lot of time, so --

9 MR. KUNEY: No, I know, and it's probably --
10 it's probably poetic justice of the sort that I don't
11 and probably suits the event that we are here for today
12 anyway, where --

13 THE COURT: And this is Mr. Kuney.

14 MR. KUNEY: I think we have a lot left to
15 say -- a lot less to say, frankly, than the people you
16 have already heard from.

17 Let me, with some trepidation, step into the issue
18 of the interpretation of the release. I actually -- I
19 agree with Mr. Abrams that if one forced oneself to try
20 to diagram the sentence, the operative language
21 is "arising out of or related to the facts and
22 circumstances alleged in the complaint," and that
23 whatever follows has to be a piece of that.

24 THE COURT: "Arising out of or relating to,
25 associated with" --

1 MR. KUNEY Yeah.

2 THE COURT: -- and you got a complaint
3 that's -- you know, what is it, a hundred or more
4 paragraphs?

5 MR. KUNEY: The complaint is a long and
6 complicated complaint. I don't deny that, but -- but
7 that's -- that's what's being released --

8 THE COURT: All right.

9 MR. KUNEY: -- is things that --

10 THE COURT: And testing of milk is -- say we
11 will take that -- is associated with, related to the
12 allegations in the complaint.

13 MR. KUNEY: There were -- there were, at some
14 point in the case -- and I confess I don't remember
15 whether it's in the language of the complaint -- one or
16 two -- my memory is it came up in the context of the
17 statute of limitations, what events had occurred within
18 four years of the filing of the complaint.

19 And what we heard in response was a couple of
20 anecdotes, not dissimilar from some of the things that
21 you heard in court today.

22 THE COURT: So the way it came up was you were
23 challenging Dr. Rausser's motives of people to
24 participate in a conspiracy, and we started hearing
25 about threats and retaliation, and I heard just a tiny

1 sliver --

2 MR. KUNEY: Right.

3 THE COURT: -- of meddling with milk
4 results --

5 MR. KUNEY: Right, and we --

6 THE COURT: -- and that's it.

7 MR. KUNEY: I think we addressed that in our
8 summary judgment and suggested that really none of those
9 episodes was there admissible evidence that could
10 corroborate the episode. I don't think -- you didn't
11 reach that point in your summary judgment ruling, but we
12 felt comfortable that it was largely uncorroborated
13 hearsay, which in many cases the witnesses, during their
14 depositions, essentially undid at least half the story
15 on their own.

16 So when Mr. Pierson says there's really not an
17 evidentiary record to make that part of the settlement
18 process, I think that's absolutely right. It's not that
19 it came up never. It's that it did come up, and it
20 didn't have sufficient substance to warrant becoming a
21 significant piece of the case or, candidly, a part of
22 the settlement discussions.

23 But let me -- let me just say one thing about the
24 settlement --

25 THE COURT: So let me just say that it caught

1 my attention today and not because you needed to have
2 Farmer 1 show that a split-second before the truck
3 arrived he had a chemist there analyzing and came up
4 with this butterfat and this protein, and then two
5 seconds later the truck driver's got a completely
6 different test.

7 I found it interesting in terms of control because,
8 frankly, prior to today -- and I am hearing Mr. Abrams
9 heard it for the first time today -- I didn't realize
10 that DFA and DMS did all the testing of the milk and
11 that there was no verification process from a third
12 party, and that's how they calculated the milk check.
13 And I could see a lot of control inherent in that.

14 I am not saying that would have been a different
15 case, but it's surprising to me to hear it for the first
16 time from the class representatives.

17 MR. KUNEY: Well, I guess, I think the class
18 counsel have given their explanation, which, from what I
19 saw and the evidence that came through discovery, I
20 would have to agree with them, that there -- that there
21 was another side to that story, which is candid --
22 frankly, when we explain what the cooperative does and
23 one of -- the services it brings to the members,
24 concentrating the testing was an enormous efficiency
25 that we thought saved people hundreds, thousands of

1 dollars across the scope of the region.

2 Rather than being -- rather than being an element
3 of coercion and control, we thought it was an important
4 efficiency that returned more money to dairy farmers.
5 And if testing had been more of an issue in the case,
6 that would have been what you would have heard from us,
7 that it's not abused and that, rather, it's a benefit.

8 But it appeared to us from where -- from the side
9 of the room we sit on that there were a few isolated
10 events that, frankly, didn't amount to a case that could
11 be pursued, particularly not on a class basis. It
12 wouldn't be a -- a couple of anecdotes here and there.

13 So, yes, I understand the point that it sounds like
14 there's a gatekeeper and, gosh, they're testing your
15 milk, but someone has to test your milk. The fact that
16 the samples are sort of -- the product is perishable,
17 and you can't necessarily argue about it, would be true
18 no matter who's doing it.

19 We -- your Honor, we totally get the idea that
20 there's some people there that don't trust us. I mean,
21 we understand that. Happily, we -- a few people came to
22 court today from a different perspective. It's not
23 simply silence. You heard some people that have made
24 multiple choices in their lifetime, in their careers,
25 to -- to operate through DFA and DMS. Not everyone out

1 there thinks that this is some evil that, remarkably
2 enough, I thought was compared to things that had
3 happened during World War II, which took for sort of a
4 jarring comment, even in a long day of interesting and
5 important comments.

6 But, yes, I take your point. It sounds like there
7 is a structure that, in the wrong hands, could be
8 abused. I would say to you it's a structure that was
9 put in place to accomplish efficiencies and did so, and
10 there's no record of that abuse in the course of a case
11 where the discovery was exhaustive, the depositions were
12 endless, and the people who had those stories, they were
13 not corroborated through the deposition process.

14 THE COURT: So I don't want to go -- and I
15 don't want to waste your time too much on this issue.
16 If you will recall, it came up in the issue of explain
17 your theory of the case to me in a way that I could
18 understand --

19 MR. KUNEY: Right.

20 THE COURT: -- relate to a law clerk, relate
21 to a jury. And -- and that has actually been a theme
22 with which you have tried to persuade me to dismiss the
23 case or carve it up --

24 MR. KUNEY: That's true.

25 THE COURT: -- or not let it go to trial.

1 MR. KUNEY: That's true.

2 THE COURT: So that's how it came up. It's
3 not we don't need to go down and investigate a new
4 claim, but it resonated with me.

5 MR. KUNEY: I think it's clear -- I take that
6 point. It may be clearer and simpler to explain than
7 some of the more complicated conspiracy theories that
8 you heard. I think what you are hearing from both the
9 plaintiffs' side and my side of the case is that there
10 was not a factual record -- it's simpler to
11 articulate -- but that there's not a factual basis that
12 would have supported it, that made them feel comfortable
13 in pursuing it.

14 And, frankly, we weren't surprised at that, because
15 this was not an issue -- there's lots of -- lots of
16 complaints, lots of lore that resonates in the dairy
17 business, and this is not something that had been a
18 problem that was being brought to the cooperative's
19 attention as something that was some kind of systemic
20 situation that would require --

21 THE COURT: So do you deny it was a request in
22 the injunctive relief? Do you deny there was no issue
23 about independent testing, and people didn't say that
24 was really important to them?

25 MR. KUNEY: Let me tell you what I remember.

1 And Mr. Abrams, I think, was clear about the fact that I
2 was only involved in the discussions about the conduct
3 remedies and not -- I was not -- I was occasionally a
4 participant but not the primary point of contact in the
5 discussion about the financial terms.

6 So that he and I made contact after I was informed,
7 much to my surprise, that there seemed to be a number
8 that the parties had agreed upon. I thought I might
9 simplify the process by sending him a proposal for
10 injunctive relief that went to what I understood to be
11 the primary elements of the complaint, which was the
12 solicitation issue and the antitrust compliance, because
13 those topics had come up repeatedly, and I thought,
14 well, look, maybe we can do this quickly.

15 Mr. Abrams, early the following week, sent me a
16 very lengthy proposal, which he told me had come from
17 his consultations with the class representatives and
18 that -- and putting a whole list of new items on the
19 table, which I had not anticipated would be part of the
20 discussion, and I understood them, again, from his
21 representations, to be coming from his clients.

22 I have -- I have not checked my file, but I have no
23 recollection of our ever discussing this testing issue
24 as part of the conversation that included the proposals
25 that had come from the class members. I didn't look.

1 It didn't occur to me to sort of go back and check and
2 see what I have.

3 I can -- I would have said what I said to you five
4 minutes ago, which is, that's not part of this case. We
5 are here to resolve -- the resolution needs to be linked
6 to the case. And that is -- that has been a nonissue
7 throughout the case, and I am not sure why we are
8 talking about it today.

9 What we -- frankly, that's the couple of
10 provisions in here which, instead of imposing relief,
11 suggest that the Northeast Area Council will take it up,
12 were other areas where we felt it was far afield, we'd
13 never heard complaints about it, it had not been an
14 issue in the case, we didn't think the dairy farmers
15 wanted it, so we said, We have got an idea. Let them --
16 if you want us to guarantee that they will have a
17 process and think about it, we will do that.

18 But I have no -- I have no memory that this testing
19 was an item that we talked about at all. And if it was,
20 it must have been 30 seconds or less.

21 And so we worked off of his paper, which had come
22 from his consultations with his class representatives.
23 We didn't agree to everything. We had a negotiation.
24 And we came up with the injunctive relief that you see
25 here, which I also agree with Mr. Pierson's observation

1 that any question about the term of the agreement, the
2 length of the agreement, I think it is clear, goes to
3 December 31st of 2016, but some of the provisions,
4 including the nonsolicitation agreement, do not have a
5 sunset provision, do not have an end point.

6 And I was going to mention, but Mr. Abrams already
7 did, that since the wonders of ECF filing, I see these
8 motions being filed in the Southeast case for
9 enforcement of the settlement. I am pleased to report
10 no such motion has been filed against DFA. There's been
11 no criticism that we haven't adhered to the terms, and
12 the other settling parties they have pursued, where they
13 felt that they have not followed their obligations under
14 the settlement, and I have every reason to expect they
15 would vigorously do that here. That's been their track
16 record, and that's how they have comported themselves.

17 So -- so we had -- I can't tell you more,
18 obviously, about the interactions between him and his
19 clients, Mr. Abrams and his clients. I can only tell
20 you that what I was presented with, and was somewhat
21 taken aback by, was the lengthy list of proposals that
22 he explained as having come from his consultation with
23 them. And then we proceeded to negotiate and to strike
24 a middle ground in terms of ones that we would accept
25 and ones that, frankly, seemed to us to be too far

1 afield and unrelated to the case or more intrusive in
2 ways that perhaps they didn't understand.

3 I don't -- I think -- I think that's it,
4 your Honor, unless there's something else that's come up
5 today that you think we can speak to, I'm happy to, but
6 otherwise, that's really all I was going to try to put
7 in front of the Court.

8 THE COURT: All right.

9 MR. KUNEY: Thank you very much.

10 THE COURT: All right. It is past 5:00, and I
11 feel especially sorry for our court reporter.

12 Thank you. You have given me lots to think about.
13 I will take the matter under advisement. I will get you
14 a written order.

15 And anything further before we close for the day?

16 MR. PIERSON: No, your Honor.

17 MR. KUNEY: Not from us, your Honor.

18 THE COURT: Thank you.

19 (Court was in recess at 5:08 p.m.)

20 *** ** ***

21 C E R T I F I C A T I O N

22 I certify that the foregoing is a correct
23 transcript from the record of proceedings in the
24 above-entitled matte



25 March 2, 2015
Date

Anne Nichols Pierce